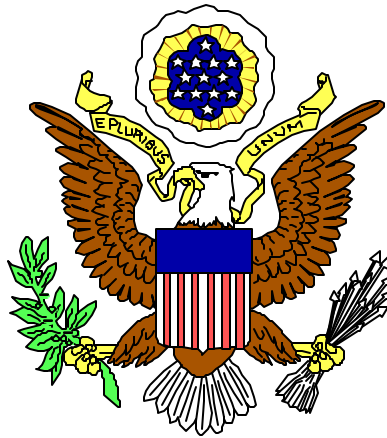


**LOCAL RULES OF THE  
UNITED STATES DISTRICT COURT  
FOR THE  
SOUTHERN DISTRICT OF INDIANA**



WITH AMENDMENTS THROUGH JANUARY 1, 2001

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA**

**District Judges**

**Chief Judge Larry J. McKinney**

**Judge Sarah Evans Barker**

**Judge David F. Hamilton**

**Judge John Daniel Tinder**

**Judge Richard L. Young**

**Judge S. Hugh Dillin**

**Magistrate Judges**

**Chief Magistrate Judge John Paul Godich**

**Magistrate Judge Kennard P. Foster**

**Magistrate Judge William G. Hussmann, Jr.**

**Magistrate Judge V. Sue Shields**

**Clerk**

**Laura A. Briggs**

# LOCAL RULES OF THE UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF INDIANA

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### **Local Rule 1.1 - Scope of the Rules**

(a) Title and Citation. These Rules shall be known as the Local Rules of the United States District Court for the Southern District of Indiana. They may be cited as "S.D.Ind.L.R. ."

(b) Effective Date. These Rules become effective on February 1, 1992.

(c) Scope of Rules. These Rules shall govern all proceedings in civil and criminal actions and proceedings before Magistrates. No litigant shall be bound by any Local Rule or standing order which is not passed in accordance with FED. R. CIV. P. 83 and 28 U.S.C. §§ 2071 and 2077.

(d) Relationship to Prior Rules; Actions Pending on Effective Date. These Rules supersede all previous Rules promulgated by this Court or any Judge of this Court. They shall govern all applicable proceedings brought in this Court after they take effect. They also shall apply to all proceedings pending at the time they take effect, except to the extent that in the opinion of the Court the application thereof would not be feasible or would work injustice, in which event the former Rules shall govern.

(e) Modification or Suspension of Rules. In individual cases the Court, upon its own motion or the motion of any party, may suspend or modify any of these Rules if the interests of justice so require.



## **Local Rule 1.2 - Availability of the Local Rules, Attorney's Handbook, and Other Resources**

Copies of these Rules, as amended, and the Attorney's Handbook are available from the Clerk's Office for a reasonable charge. These Rules, the Attorney's Handbook, and other resources appear on the Court web site at [www.insd.uscourts.gov](http://www.insd.uscourts.gov).

When amendments to these Rules are made, notice of such amendments shall be provided among other places, in Res Gestae, published monthly by the Indiana State Bar Association.

When amendments to these Rules are proposed, notice of such proposal and an opportunity for public comment shall be provided. When the Rules are amended otherwise, public notice of such amendments shall be given.

Notes: Amended effective January 1, 2000

### **Local Rule 1.3 - Sanctions for Errors as to Form**

The Court may sanction for violation of any Local Rule governing the form of pleadings and other papers filed with the Court. Local Rules governing the form of pleadings and other papers filed with the Court include, but are not limited to, those Local Rules regulating the paper size, the number of copies filed with the Court, and the requirement of a special designation in the caption. Nothing in this Rule shall prohibit the Court from ordering stricken from the record a paper which does not comply with these Rules.

Notes: Amended effective January 1, 2000.

#### **Local Rule 4.6 - Representation by Counsel in Certain Civil Actions**

(a) Civil Legal Assistance Panel. A Civil Legal Assistance Panel is created. In appropriate cases, individual attorneys, law school legal clinics, and law firms willing to represent litigants who lack the resources to retain counsel shall apply for membership in the Civil Legal Assistance Panel. By applying, applicants indicate a willingness to accept appointments whenever reasonably possible.

(b) Requests for Representation.

(1) If the Court determines that requesting counsel is warranted under 28 U.S.C. § 1915(e), 42 U.S.C. § 2000e-5(f), or any other applicable statute, the Court may request a member of the Civil Legal Assistance Panel to represent the party or may direct the Clerk to make such request.

(2) The Court may request representation by a specific member of the panel or of the bar of this Court who is particularly qualified. Otherwise, the Clerk shall select an attorney from the panel at random. The Clerk shall send written notice of the request for representation to the attorney, the newly represented party, and all other parties in the action.

(c) Appearance and Duration of Representation.

(1) The attorney whose representation has been requested by the Court shall file an appearance within fifteen (15) days of receipt of the request.

(2) For good cause, the attorney may decline the Court's request.

(3) If an attorney accepts a request for representation pursuant to part (b) of this Rule, the attorney may thereafter seek to withdraw from the action and terminate the attorney's representation.

(A) Except as noted in parts (B) and (C) below, the requested attorney shall first make the request for relief from the client, in writing. The request for relief shall expressly inform the client that the Court may choose not to request replacement counsel.

(B) If the relief requested is due to personal incompatibility between the attorney and the client, or to the attorney's belief that the client is proceeding for improper purposes, or if the client rejects the attorney's relief request, the attorney may petition for leave to withdraw in accordance with Local Rule 83.7(b).

(C) If a replacement attorney has been arranged by the original attorney or by the client, the requirements of paragraphs (c)(2)(A) and (c)(2)(B) of this Rule shall be waived. The original counsel shall file a notice of withdrawal which includes the name, address and phone number of replacement counsel.

(4) The client may for good cause request the Court to discharge the requested attorney and may request a replacement attorney.

(5) The Court shall have discretion to grant or deny petitions to withdraw or requests for discharge.

(6) When a requested attorney is relieved by consent, granted leave to withdraw, or discharged, the Court shall have discretion not to order a replacement.

(d) Duration of Appointment.

(1) If at any time it appears the client is able to afford private counsel, the requested attorney may seek leave to withdraw.

(2) The representation shall begin on the date the requested attorney enters an appearance and shall continue until he/she has been relieved or until final judgment is entered and reasonable collection or enforcement efforts are made. The requested attorney shall determine whether an appeal is meritorious. If so, in accordance with Item XII of the Seventh Circuit Practitioner's Handbook, the attorney shall continue to represent the client on appeal unless and until relieved of the representation by the Court of Appeals.

(e) Expenses and Compensation.

(1) Reimbursement for attorneys requested under this Rule shall be available in the amount of Five Hundred Dollars (\$500.00) for itemized copy, mail, telephone, travel, and expert witness expenses. At the discretion of the assigned Judge on a case-by-case basis, reimbursement of itemized expenses may be made up to One Thousand Dollars (\$1000.00). Expenses paid under this Rule shall be payable upon petition supported by appropriate documentation at the conclusion of an action and only if not otherwise recoverable.

(2) Upon appropriate application, the Court may award attorney's fees to a prevailing party with requested counsel to the same extent as would be awarded to a party with privately retained attorney.

Notes: Major amendments effective January 1, 2000. Subsection (d)(2) amended January 1, 1999.

### **Local Rule 5.1 - General Format of Papers Presented for Filing**

(a) Form, Style and Size of Papers. In order that the files of the Clerk's office may be kept under the system commonly known as "flat filing," all papers presented to the Clerk or Judge for filing shall be flat and unfolded. All filings shall be on white paper of good quality, 8 ½" x 11" in size, and shall be plainly typewritten, printed, or prepared by a clearly legible duplication process, and double spaced, except for quoted material. The filings shall be either stapled in the top left corner or bound in a manner which permits the document to lie reasonably flat when open (*e.g.*, spiral bound), and shall be two-hole punched at the top (but not fastened)(the punches shall be 2 ¾" apart and appropriately centered). Should the nature of the filing be so unusual as to make these methods of fastening infeasible, a party may seek leave of the Court to use a different method. Such leave shall be sought prior to the submission of any filing fastened in any way not conforming to this Rule. The title of each filing must be set out on the first page. Each page shall be numbered consecutively. Any filing containing four or more exhibits shall include a separate index identifying and briefly describing each exhibit.

(b) Signature. Every pleading, motion, or other paper shall clearly identify the name, address, and telephone number of the *pro se* litigant or attorney. Any pleading, motion, or other paper not signed by at least one attorney appearing of record as required by Rule 11, *Federal Rules of Civil Procedure* shall, upon discovery of such omission, be stricken from the record unless such omission is promptly corrected upon notice to said attorney. A rubber stamp or facsimile signature on the original copy of such document shall not be used.

(c) Number of Copies; Return of File-Stamped Copies. An original of all pleadings, motions, and other papers shall be submitted for filing unless ordered otherwise. If a party wishes to receive a file-stamped copy of the pleading, motion, or paper by return mail, the party shall include an additional copy to be file-stamped, and a self-addressed envelope of adequate size and with adequate postage.

(d) Form of Orders. The filing of a motion or petition requiring the entry of a routine or uncontested order by the Judge or the Clerk shall be accompanied by a suitable tendered form of order together with sufficient copies thereof for service upon all parties or their counsel whose names and addresses shall be typed in the lower left-hand corner of the tendered form of order. Whenever the Clerk is required to give notice, as provided by Rules 53(d)(1), 53(e)(1), 65.1 and 77(d) of the *Federal Rules of Civil Procedure*, or Local Rule 24.1, the party or parties requesting such notice shall furnish the Clerk with sufficient copies of the proposed notice to be given and the names and addresses of the parties or their counsel to whom such notice is to be given.

(e) The Clerk is authorized to file papers received by facsimile transmission only upon specific authorization by a Judge of the Court granted upon a finding of compelling circumstances warranting such method of filing. Whenever facsimile filings are permitted, a substitute copy that complies with Local Rule 5.1(a) shall be filed to replace the facsimile within seven (7) days.

(f) Notice by Publication. All notices required to be published in a case shall be delivered by the Clerk of the Court to the party originating such notice or his counsel, who shall have the responsibility for delivering such notice to the appropriate newspapers for publication.

Notes: Amended effective January 1, 2000. Subsection (f) was formerly contained in Local Rule 4.1(b).

### **Local Rule 6.1 - Extensions of Time**

(a) In every civil action pending in this Court in which a party wishes to obtain an initial extension of time not exceeding thirty (30) days within which to file a responsive pleading or a response to a written request for discovery or request for admission, the party shall contact counsel for the opposing party and solicit opposing counsel's agreement to the extension. In the event opposing counsel does not object to the extension or cannot with due diligence be reached, the party requesting the extension shall file a notice with the Court reciting the lack of objection to the extension by opposing counsel or the fact that opposing counsel could not with due diligence be reached. No further filings with the Court nor action by the Court shall be required for the extension.

(b) Any other request for an extension of time, unless made in open court or at a conference, shall be made by written motion. In the event the opposing counsel objects to the request for extension, the party seeking the same shall recite in the motion the effort to obtain agreement.

(c) Any motion or notice filed pursuant to this Rule shall state the original due date and the date to which time is extended.

Notes: Amended effective January 1, 2000.

**Local Rule 7.1 - Motion Practice; Length, Form, and Schedule of Briefs; Attorneys' Conference; Notification of Settlement/Resolution of Pending Motions**

(a) A motion to dismiss under Rule 12 of the FED. R. CIV. P. for summary judgment, for judgment on the pleadings, for more definite statement, to strike, or motions made pursuant to Rule 37 of the FED. R. CIV. P. shall be accompanied by a separate supporting brief. Except for summary judgment motions, which are governed by L.R. 56.1, unless the Court otherwise directs, an adverse party shall have fifteen (15) days after service of the initial brief in which to serve and file an answer brief, and the moving party shall have seven (7) days after service of the answer brief in which to serve and file a reply brief. Unless the Court otherwise directs, as respects all other motions, the adverse party shall have fifteen (15) days after service thereof in which to serve and file a response thereto and the moving party shall have seven (7) days after service of such response in which to serve and file a reply thereto. Time shall be computed as provided in Rule 6, FED. R. CIV. P. Local Rule 6.1 does not apply to the filing of briefs; therefore, extensions of time shall be granted only by order of the assigned or presiding Judge or Magistrate for good cause shown. Each motion shall be separate; alternative motions filed together shall each be named in the caption on the face. Failure to file an answer brief or reply brief within the time prescribed may subject the motion to summary ruling.

(b) Except by permission of the Court, no brief shall exceed 35 pages in length (exclusive of any pages containing a table of contents, table of authorities, and appendices), and no reply brief shall exceed 20 pages. Permission to file briefs in excess of these page limitations will be granted only upon motion supported by extraordinary and compelling reasons.

Briefs exceeding 35 pages in length (exclusive of any pages containing the table of contents, table of authorities, and appendices) shall contain (a) a table of contents with page references; (b) a statement of issues; and (c) a table of cases (alphabetically arranged), statutes and other authorities cited, with reference to the pages of the brief where they are cited.

Ordinarily, copies of cited authorities need not be appended to court filings. However, a party citing a decision, statute, or regulation that is not available on Westlaw or Lexis/Nexis shall furnish a copy to the Court and other parties. A party citing a decision, statute or regulation not published in the *United States Reports*, the *Supreme Court Reporter*, the *Federal Reporters*, the *Federal Supplements*, the *Federal Rules Decisions*, the *Bankruptcy Reporter*, the *United States Patents Quarterly*, the *North Eastern Reporters*, or a statute or regulation not found in the current publication of the *United States Code*, the *Code of Federal Regulations*, the *Indiana Code*, or the *Indiana Administrative Code*, must provide a copy of such materials to the Court and any other party upon request. With respect to decisions of the Supreme Court of the United States not yet available in the *United States Reports*, citation should be made both to the *Supreme Court Reporter* and to the *Lawyers' Edition*.



(c) The Court may deny any motion for the award of attorney's fees, except post-judgment attorney's fees, motion for sanctions under Rule 11, FED. R. CIV. P., and motion for attorney disqualification (except those motions brought by a person appearing pro se) unless counsel for the moving party files with the Court, at the time of filing the motion, a separate statement showing that the attorney making the motion has made a reasonable effort to reach agreement with opposing attorney(s) on the matter(s) set forth in the motion. This statement shall recite, in addition, the date, time, and place of such conference and the names of all parties participating therein. If counsel for any party advises the Court in writing that opposing counsel has refused or delayed meeting and discussing the matters covered in this Rule, the Court may take such action as is appropriate to avoid unreasonable delay.

(d) The parties shall immediately notify the Court of any reasonably anticipated settlement of a case or the resolution of any pending motion.

Notes: Second sentence of subparagraph (a) amended January 1, 1999. Third paragraph of subparagraph (b) amended January 1, 2000.

### **Local Rule 7.5 - Requests for Oral Arguments and Hearings**

(a) A request for oral argument on a motion shall be by separate instrument served and filed with the brief, answer brief, or reply brief. The request for oral argument shall set forth specifically the purpose of the request and an estimate of the time reasonably required for the Court to devote to the argument. An oral argument shall be confined to argument and shall not include the presentation of additional evidence. If a request for oral argument is granted, the argument shall be held at such place within this district as the Court may designate for its convenience without regard to the division in which the cause shall stand for trial. The granting of a motion for oral argument shall be wholly discretionary with the Court. The Court, upon its own initiative, may also direct that oral argument be held.

(b) A request for an evidentiary hearing on a motion or petition may be made by any party after a motion or petition has been filed. The request for hearing shall set forth specifically the purpose of the hearing and an estimate of the time reasonably required for the Court to devote to the hearing. Dates of hearing shall not be specified in a notice of a motion or petition unless prior authorization is obtained from the Court or Deputy Court Clerk. If a request for a hearing is granted, a hearing shall be held at such place within this district as the Court may designate for its convenience without regard to the division in which the cause shall stand for trial. The Court, upon its own initiative, may also direct that a hearing be held.

### **Local Rule 8.1 - *Pro Se* Complaints**

Form Complaints. The following complaints filed on behalf of parties representing themselves shall be on forms supplied by the Clerk of the Court:

- (1) The Civil Rights Act, 42 U.S.C. § 1983;
- (2) The Social Security Act, 42 U.S.C. § 405(g); and
- (3) Any complaint alleging employment discrimination under a federal statute.

Notes: Amended effective January 1, 2000.

### **Local Rule 9.2 - Request for Three-Judge Court**

(a) In any action or proceeding which a party believes is required to be heard by a three-Judge District Court, the words "Three-Judge District Court Requested" or the equivalent shall be included immediately following the title of the first pleading in which the cause of action requiring a three-Judge Court is pleaded. Unless the basis for the request is apparent from the pleading, it shall be set forth in the pleading or in a brief statement attached thereto. The words "Three-Judge District Court Requested" or the equivalent on a pleading is a sufficient request under 28 U.S.C. § 2284.

(b) In any action or proceeding in which a three-Judge Court is requested, parties shall file the original and three copies of every pleading, motion, notice, or other document with the Clerk until it is determined either that a three-Judge Court will not be convened or that the three-Judge Court has been convened and dissolved, and the case remanded to a single Judge. The parties may be permitted to file fewer copies by order of the Court.

### **Local Rule 15.1 - Form of a Motion to Amend and Its Supporting Documentation**

A party who moves to amend a pleading shall attach the original of the amendment, and one copy, to the motion. Any amendment to a pleading, whether filed as a matter of course or upon a motion to amend, must, except by leave of Court, reproduce the entire pleading as amended, and may not incorporate any prior pleading by reference.

## **Local Rule 16.1 - Pretrial Procedures**

(a) Purpose. The fundamental purpose of pretrial procedure as provided in Rule 16 of the FED. R. CIV. P. is to eliminate issues not genuinely in contest and to facilitate the trial of issues that must be tried. The normal pretrial requirements are set forth in Rule 16 of the FED. R. CIV. P. It is anticipated that the requirements will be followed in all respects unless any Judge of this Court shall vary the requirements and shall so advise counsel. The following provisions shall also apply to the conduct of pretrial conferences by a United States Magistrate Judge and where applicable, reference to the Judge or the Court shall include a United States Magistrate Judge.

(b) Notice. In any civil case, the assigned or presiding Judge may direct the Clerk to issue notice of a pretrial conference, directing the parties to prepare and to appear before the Court.

Unless otherwise ordered by the court, the following types of cases will be exempted from the scheduling order requirement of Rule 16(b) of the FED. R. CIV. P.:

- (1) An action for review of an administrative record;
- (2) A petition for habeas corpus or other proceeding to challenge a criminal conviction or sentence;
- (3) An action brought without counsel by a person in custody of the United States, a State or a State subdivision;
- (4) An action to enforce or quash an administrative summons or subpoena;
- (5) An action by the United States to recover benefit payments;
- (6) An action by the United States to collect on a student loan guaranteed by the United States;
- (7) A proceeding ancillary to proceedings in another court; and
- (8) An action to enforce, vacate or modify an arbitration award.

(c) Initial pretrial conference.

(1) In all cases not exempted pursuant to subsection (b) of this Rule, the Court shall order the parties to appear for an initial pretrial conference no more than 120 days after the filing of the complaint. The order setting the conference shall issue promptly following the appearance of counsel for all defendants and in any event no later than sixty days after the filing of the complaint.

(2) The order setting the initial pretrial conference, in addition to such other matters as the Court may direct, shall require counsel for all parties to confer at least 21 days before the initial pre-trial conference (as required by FED. R. CIV. P. 26(f)), prepare a case management plan and to file such plan by a date specified in the order, which date shall not be later than 14 days after the initial pretrial conference setting. The order may provide that the pretrial conference setting shall be vacated upon the filing of a case management plan that complies with this Rule and upon the approval of such plan by the Court.

(3) Upon the filing of an acceptable case management plan in compliance with the order and this Rule, the Court may issue an order adopting the plan, ordering it performed and vacating the initial pretrial conference setting, and setting a firm trial date.

(4) If the parties do not file a case management plan, or file a plan that fails materially to comply with the order and this Rule, or file a plan that reflects material disagreements among the parties, the Court may:

(A) Conduct the initial pretrial conference and, following such conference, enter an order reflecting the matters ordered and agreed to at the conference and setting a firm trial date; or

(B) Issue an order without further hearing adopting the acceptable portions of the plan, omitting unacceptable portions, supplying omitted matters, resolving disputed matters, vacating the pretrial conference setting and setting a firm trial date. The Court may conduct a telephone conference with counsel prior to entering such an order.

(d) Contents of case management plan.

(1) The objective of the case management plan is to promote the ends of justice by providing for the timely and efficient resolution of the case by trial, settlement or pretrial adjudication. In preparing the plan, counsel shall confer in good faith concerning the matters set forth below and any other matters tending to accomplish the objective of this Rule. The plan shall incorporate matters covered by the conference on which the parties have agreed as well as advise the Court of any substantial disagreements on such matters.

(2) The conference and case management plan shall address the following matters:

(A) Trial date. The plan should be premised on a trial setting between six and eighteen months after the filing of the complaint and should recommend a trial date by month and year. If counsel agree that the case cannot reasonably be ready for trial within eighteen months, the plan shall state in detail the basis for that conclusion. The plan shall also state the estimated time required for trial.

(B) Synopsis of case. The plan shall include the essential legal elements of each claim or defense upon which a party bears the burden of proof, and a description of the amount of any lost wages, medical bills or other damage amounts that are liquidated.

(C) Discovery subjects. The plan shall identify the subjects on which discovery is needed.

(D) Discovery schedule. The plan shall provide for the timely and efficient completion of discovery, taking into account the desirability of staged discovery where discovery in stages might materially advance the resolution of the case. The plan should schedule the exchange of initial disclosures under FED. R. CIV. P. 26(a)(1) and L.R. 26.3. The plan shall provide for disclosure of expert witnesses as required by FED. R. CIV. P. 26(a)(2)(A), and the parties shall discuss any stipulations with respect to the timing and requirements of expert reports under that Rule. The plan should also provide a schedule for the taking of the depositions of expert witnesses, together with (1) a designation whether the deposition is for discovery purposes only or is to be offered in evidence at trial, (2) a determination of the party responsible for the payment of the witness' fees, and (3) as to each witness designated, when any motions seeking to preclude the expert's testimony shall be filed.

(E) Witnesses and exhibits. The plan shall incorporate a schedule for the preliminary and final disclosure of witnesses and exhibits and should schedule the pretrial disclosures required by FED. R. CIV. P. 26(a)(3).

(F) Limits on depositions, interrogatories, and admissions. The plan shall discuss whether the limits on the number or length of depositions imposed by FED. R. CIV. P. 30(a)(2)(A), 31(a)(2)(A), and 30(d), the number of interrogatories imposed by FED. R. CIV. P. 33(a), or the number of admissions under L.R. 26.1(b) should be varied by stipulation.

(G) Motions. The plan shall identify any motions which the parties have filed or intend to file. The parties shall discuss whether any case-dispositive or other motions should be scheduled in relation to discovery or other trial preparation so as to promote the efficient resolution of the case and, if so, the plan shall provide a schedule for the filing and briefing of such motions.

(H) Stipulations. The plan shall address possible stipulations and, where stipulations would promote the efficient resolution of the case, the plan shall provide a schedule for the filing of stipulations.

(I) Bifurcation. The plan shall address whether a separation of claims, defenses or issues would be desirable; and if so, whether discovery should be limited to the claims, defenses or issues to be tried first.

(J) Alternative dispute resolution. The plan shall address the desirability of employing alternative dispute resolution methods in the case, including mediation, neutral evaluation, arbitration, mini-trials or mini-hearings, and summary jury trials.



(K) Settlement. The plan shall address the possibility of settlement both presently and at future stages of the case. The plan may provide a schedule for the exchange of settlement demands and offers, and may schedule particular discovery or motions in order to facilitate settlement.

(L) Referral to a Magistrate Judge. The plan shall address whether the parties consent to the referral of the case to a Magistrate Judge.

(M) Amendments to the pleadings; joinder of additional parties. The plan shall address whether amendments to the pleadings, third party complaints or impleading petitions, or other joinder of additional parties are contemplated. The plan shall impose time limits on the joinder of additional parties and for amendments to the pleadings.

(N) Other matters. The plan shall address (1) whether there is a question of jurisdiction over the person or of the subject matter of the action, (2) whether all parties have been correctly designated and properly served, (3) whether there is any question of appointment of a guardian ad litem, next friend, administrator, executor, receiver or trustee, (4) whether trial by jury has been timely demanded, (5) whether related actions are pending or contemplated in any Court, and whether there is any need for protective orders under FED. R. CIV. P. 26(c).

(O) Interim pretrial conferences. The parties shall discuss whether interim pretrial conferences prior to the final pretrial conference should be scheduled.

(e) Additional pretrial conferences. Additional pretrial conference(s) shall be held as ordered by the Court. Prior to each such pretrial conference, counsel for all parties will confer, in person or by telephone, to prepare for the conference. Such conference shall include a review of the case management plan and shall address whether the plan should be supplemented or amended. In cases in which pretrial case management is assigned to a Magistrate Judge, counsel shall also discuss whether direct involvement by the District Judge prior to trial might materially advance the case. The discussions of counsel shall be summarized by one of counsel who shall prepare an agenda for the pretrial conference which shall reflect the agreements reached among or between counsel, including any proposed supplements or amendments to the case management plan. It shall be the responsibility of all counsel that an agenda be presented to the Court at the pretrial conference. Failure to present an agenda and failure to confer as required may be grounds for the imposition of sanctions.

(f) Contents of final pretrial order. In addition to such other provisions as the Court may direct, the final pretrial order may direct each party to file and serve the following:

- (1) A trial brief, the nature and extent of which shall be directed by the Judge. Copies of all foreign statutes involved, with reference to their source, shall also be submitted.
- (2) In nonjury cases, proposed findings of fact and conclusions of law, including citations for each conclusion of law if available.
- (3) In jury cases, requested charges to the jury covering issues to be litigated. Each charge should cite appropriate authority.
- (4) A stipulation of facts relating to jurisdiction and the merits of the issues.
- (5) A list of exhibits to be offered at trial, except those to be used solely for impeachment or rebuttal.
- (6) A statement of any objections to exhibits listed by other parties. Unless objections to authenticity are noted, copies of exhibits may be introduced in lieu of originals.
- (7) A list of names and addresses of witnesses to be called, except those to be called solely for impeachment or rebuttal. The list shall specify the general subject matter of each witness's testimony.

(g) Preparation of pretrial entry. The Court may order one of counsel to prepare a pretrial entry setting forth the agreements of counsel reached and the orders of Court entered at the pretrial conference. Such entry shall be signed by all counsel. Signature shall affirm that such orders were made but shall not be a waiver of any right to object to such orders.

(h) Settlement. Counsel should anticipate that the subject of settlement will be discussed at any pretrial conference. Accordingly, counsel should be prepared to state his or her client's present position on settlement. In particular, prior to any conference, counsel should have ascertained his

or her settlement authority and be prepared to enter into negotiations in good faith. The Court may require the parties or their agents or insurers to appear in person or by telephone for settlement negotiations. Details of such discussions at the pretrial conference should not appear in the pretrial entry.

(i) Deadlines. Deadlines established in any order or pretrial entry under this Rule shall not be altered except by agreement of the parties and the Court, or for good cause shown.

(j) Sanctions. Should a party willfully fail to comply with any part of this Rule, the Court in its discretion may impose appropriate sanctions.

Notes: Amended effective January 1, 2001. Amended to come into compliance with FED.R.CIV.P. 26, as amended December 1, 2000. Subsections (d)(2) and (h) amended effective January 1, 2000.

### **Local Rule 16.2 - Responsibilities for Cases Remanded or Transferred**

When the Court of Appeals remands a case to this court for further proceedings or when an action is docketed in this court after having been transferred from another district, counsel for the parties shall, within 21 days after receipt by this court of the judgment or transfer, file statements of their positions as to the action which ought to be taken by this court.

Notes: Rule 16.2 adopted effective January 1, 2001.

### **Local Rule 16.3 - Continuances in Civil Cases**

In any civil action, upon motion, or other evidence, or agreement of the parties, proceedings may be continued in the discretion of the Court. The Court expects counsel to have consulted with their clients prior to requesting continuance of a trial setting. The Court may award such costs as will reimburse the other parties for their actual expenses incurred from the delay. A motion to postpone a civil trial on account of the absence of evidence can be made only upon affidavit, showing the materiality of the evidence expected to be obtained, that due diligence has been used to obtain it; where the evidence may be; and if it is for an absent witness, the affidavit must show the name and residence of the witness, if known, and the probability of procuring the testimony within a reasonable time, and that his/her absence has not been procured by the act or connivance of the party, nor by others at the party's request, nor with his/her knowledge or consent, and what facts the party believes to be true, and that he/she is unable to prove such facts by any other witness whose testimony can be as readily procured. If the adverse party will stipulate to the content of the evidence that would have been elicited at trial from the absent document or witness, the trial shall not be postponed. In the event of a stipulation, the parties shall have the right to contest the stipulated evidence to the same extent as if the absent document or witness were available at trial.

Notes: Amended effective January 1, 2000.

### **Local Rule 23.1 - Designation of "Class Action" in the Caption**

(a) In any case sought to be maintained as a class action, the complaint shall bear next to its caption the legend "Complaint -- Class Action." The complaint shall also contain a reference to the portion or portions of Rule 23, FED. R. CIV. P., under which it is claimed that the suit is properly maintained as a class action.

(b) Within ninety (90) days after the filing of a complaint in a class action, unless this period is extended on motion for good cause appearing, the plaintiff shall file a separate motion, or the Court shall direct, that a determination be made under subdivision (c)(1) of Rule 23, *Federal Rules of Civil Procedure*, as to whether the case is to be maintained as a class action. In ruling upon such a motion, the Court may allow the action to be maintained as a class action, may disallow the action to be so maintained, or may order postponement of the determination pending discovery or other such preliminary procedures as are appropriate and necessary in the circumstances. Whenever possible, where it is held that the determination should be postponed, a date will be fixed by the Court for renewal of the motion.

(c) The provisions of the Rule shall apply, with appropriate adaptations, to any counterclaim or cross claim alleged to be brought for or against a class.

Notes: Subsection (b) amended January 1, 2000, to clarify that a separate motion seeking class certification must be filed within the 90 day period specified in the Rule.

## **Local Rule 24.1 - Procedure for Notification of Any Claim of Unconstitutionality**

(a) Whenever the constitutionality of any act of Congress affecting the public interest is or is intended to be drawn into question in any suit or proceeding to which the United States, or any agency thereof, or any officer or employee thereof, as such officer or employee, is not a party, counsel for the party raising or intending to raise such constitutional issue shall immediately advise the Clerk, in writing, specifying the act or the provisions thereof which are attacked, with a proper reference to the title and section of the United States Code if the act is included therein.

(b) In any action, suit, or proceeding in which a State or any agency, officer, or employee thereof is not a party, wherein the constitutionality of any statute of that State affecting the public interest is drawn in question, the party raising the constitutional issue shall notify the Court of the existence of the question by stating on the pleading that alleges the unconstitutionality, immediately following the title of the pleading, "Claim of Unconstitutionality" or the equivalent.

(c) The party giving notice of a challenge to the constitutionality of a statute under subsection (a) or (b) shall also move the Court to certify the question to the Attorney General of the United States and the United States Attorney in the case of an act of Congress; or to the Attorney General of the state in the case of a state statute, as required by 28 U.S.C. § 2403. A copy of the motion and notice shall be served upon the pertinent attorney general, but the attorney general shall not be served with a summons or made a party to the action unless intervention is sought. The moving party shall tender a form of order and include on the distribution list the pertinent attorney general, with sufficient copies for service. An order granting certification shall provide a set time within which the attorney general may seek to intervene, and the Clerk shall serve a copy of the order upon the attorney general.

(d) Failure to comply with this Rule will not be grounds for waiving the constitutional issue or for waiving any other rights the party may have. Any notice provided under this Rule, or lack of notice, will not serve as a substitute for, or as a waiver of, any pleading requirement set forth in statute or the FED. R. CIV. P.

Notes: Amended effective January 1, 2000.

### **Local Rule 26.1 - Form of Certain Discovery Documents**

The party propounding written interrogatories pursuant to Rule 33 of the FED. R. CIV. P., requests for production of documents or things pursuant to Rule 34, FED. R. CIV. P., or requests for admission pursuant to Rule 36, FED. R. CIV. P., shall number each such interrogatory or request sequentially. The party answering, responding or objecting to such interrogatories or requests shall quote each such interrogatory or request in full immediately preceding the statement of any answer, response or objection thereto, and shall number each such response to correspond with the number assigned to the request.

Notes: Amended effective January 1, 2001. Former subsection (b) moved to new Local Rule 36.1, for numbering consistent with the Federal Rules of Civil Procedure.



## **Local Rule 26.2 - Filing of Discovery Materials**

Because of the considerable cost to the parties of furnishing discovery materials, and the serious problems encountered with storage, this Court adopts the following procedure for filing of discovery materials with the Court:

(a) If relief is sought under Rules 26(c) or 37, FED. R. CIV. P., concerning any disclosures, interrogatories, or requests for production or inspection, answers to interrogatories or responses to requests for production or inspection, copies of the portions of the disclosures, interrogatories, requests, answers or responses in dispute shall be filed with the Court contemporaneously with any motion filed under these Rules.

(b) If disclosures, interrogatories, requests, answers, responses or depositions are to be used at trial or are necessary to a pretrial motion which might result in a final order on any issue, the portions to be used shall be filed with the Clerk at the outset of the trial or at the filing of the motion insofar as their use can be reasonably anticipated.

(c) When documentation of discovery not previously in the record is needed for appeal purposes, upon an application and order of the Court, or by stipulation of counsel, the necessary discovery papers shall be filed with the Clerk.

**Notes:** Amended effective January 1, 2001. Section (e) is deleted as unnecessary; FED. R. CIV. P. 32 does not require any such motion before a deposition is used pursuant to that rule.

**Note: Local Rule 26.3, Exemption from Certain Federal Rules of Civil Procedure, is deleted effective January 1, 2001, due to changes in FED.R.CIV.P. 26.**

### **Local Rule 30.1 - Conduct of Depositions**

(a) If a claim of privilege has been asserted as a basis for an instruction not to answer, the attorney seeking disclosure shall have reasonable latitude during the deposition to question the deponent to establish relevant information concerning the legal appropriateness of the assertion of the privilege, including (i) the applicability of the privilege being asserted, (ii) circumstances that may result in the privilege having been waived, and (iii) circumstances that may overcome a claim of qualified privilege.

(b) An attorney for a deponent shall not initiate a private conference with the deponent regarding a pending question except for the purpose of determining whether a claim of privilege should be asserted.

**Notes:** Amended effective January 1, 2001. Subparagraphs (a) and (d) are deleted as duplicious of FED. R. CIV. P. 30(d).

### **Local Rule 36.1 - Requests for Admissions**

No party shall serve on any other party more than 25 requests for admission without leave of Court. Requests relating to the authenticity or genuineness of documents are not subject to this limitation. Any party desiring to serve additional requests for admission shall file a written motion setting forth the proposed additional requests for admission and the reason(s) for their use.

Notes: Effective January 1, 2001. This Rule consists of language formerly contained in L.R. 26.1(b).

### **Local Rule 37.1 - Informal Conference to Settle Discovery Disputes**

The Court may deny any discovery motion (except those motions brought by a person appearing pro se and those brought pursuant to Rule 26(c), FED. R. CIV. P., by a person who is not a party), unless counsel for the moving party files with the Court, at the time of filing the motion, a separate statement showing that the attorney making the motion has made a reasonable effort to reach agreement with opposing attorney(s) on the matter(s) set forth in the motion.

This statement shall recite, in addition, the date, time, and place of such conference and the names of all parties participating therein. If counsel for any party advises the Court in writing that opposing counsel has refused or delayed meeting and discussing the problems covered in this Rule, the Court may take such action as is appropriate to avoid unreasonable delay.

### **Local Rule 37.3 - Mode of Raising Discovery Disputes with the Court**

Where an objection is raised during the taking of a deposition which threatens to prevent the completion of the deposition and which is susceptible to resolution by the Court without the submission of written materials, any party may recess the deposition for the purpose of submitting the objection by telephone to a judicial officer for a ruling *instanter*.

### **Local Rule 38.1 - Notation of "Jury Demand" in the Pleading**

If a party demands a jury trial by indorsing it on a pleading, as permitted by Rule 38(b) of the FED. R. CIV. P., a notation shall be placed on the front page of the pleading, immediately following the title of the pleading, stating "Demand For Jury Trial" or an equivalent statement. This notation will serve as a sufficient demand under Rule 38(b). Failure to make such a notation will not result in a waiver, pursuant to Rule 38(d).

### **Local Rule 39.1 - Authorization of Bankruptcy Judges to Conduct Jury Trials**

Each Bankruptcy Judge of this Court is authorized to conduct jury trials in any proceeding to which, under applicable law, the right to a jury trial exists. This designation is made pursuant to 28 U.S.C. § 157(e). No such trial shall be held absent the express consent of all the parties. When such a trial is scheduled, the presiding Judge may utilize the then-current pool of prospective jurors of the District Court.

Notes: Effective June 8, 1998.

### **Local Rule 40.1 - Assignment of Cases**

(a) The caseload of the Court shall be distributed among the Judges and Magistrate Judges as provided by order of the Court. All cases, as they are filed, shall be assigned to appropriate judicial officers in accordance with the method prescribed by the Court from time to time.

(b) No Clerk, Deputy Clerk, or other employee in the Clerk's office shall reveal to any person, other than the Judges, the order of assignment of cases until after they have been filed and assigned or assign any case otherwise than as herein provided or as ordered by the District Court.

(c) No person shall directly or indirectly cause or procure or attempt to cause or procure any Clerk, Deputy Clerk or other Court attache to reveal to any person, other than the Judges of the Court, the order of assignment of cases until after they have been filed and assigned as provided above. No person shall directly or indirectly cause or procure or attempt to cause or procure any Clerk, Deputy Clerk or other Court attache to assign any case otherwise than as herein provided or as ordered by the District Court. Any person violating this subparagraph may be punished for contempt of Court.

(d) At the time of filing and at any time thereafter when it becomes known, counsel shall file a notice of related action when it appears that any case:

1. grows out of the same transaction or occurrence,
2. involves the same property, or
3. involves the validity or infringement of a patent, trademark or copyright,

as is involved in a pending case.

(e) Related cases shall be transferred from one Judge to another Judge, or from one Magistrate Judge to another Magistrate Judge, when it is determined that a later numbered case is related to a pending, earlier numbered case assigned to another Judge or Magistrate Judge.

(f) When required by considerations of workload, in the interest of the expeditious administration of justice, the Court may reassign cases among the Judges or Magistrate Judges.

(g) Whenever it becomes necessary to reassign any case for reasons other than workload, the Chief Judge shall refer the case to the Clerk for reassignment. When reassigning cases pursuant to the provisions of this subparagraph, the Clerk shall employ a similar random lot system as used for all cases when first filed.

(h) Unless the remand order directs otherwise, following the docketing of a mandate for a new trial pursuant to Seventh Circuit Rule 36 and allowing fifteen (15) days thereafter within



which all parties may file their request that the Judge previously assigned to the case retry the case, the Clerk shall reassign the case to another Judge selected by random lot.

Notes: Subsections (e) and (f) amended effective January 1, 2000. In conjunction with the amendments to 40.1(e) and (f), Local Rule 72.4 was deleted in its entirety. Subsections (d) and (h) amended January 1, 1999.

### **Local Rule 40.3 - Calendar of Cases**

All trials shall commence within six to eighteen months after filing of the complaint unless the Court determines that, because of the complexity of the case, staging provided by the case management plan, or the demands of the Court's docket, the trial cannot reasonably be held within such time.

#### **Local Rule 40.4 - Division of Business Among District Judges**

(a) This district has four divisions: Indianapolis, Evansville, New Albany and Terre Haute. Judges may be assigned to a division of this Court, permanently, for trial sessions or by cause number, as the Court may from time to time order. Judges assigned to trial sessions shall have the authority to conduct trials and evidentiary hearings in all pending cases during the trial session in the same manner as though the cases were assigned to him/her.

(b) Divisions of this Court to which one or more Judges have been permanently assigned shall be in continuous session.

(c) At all times there shall be a Motions Judge designated by the Court. The identity of the Motions Judge shall be available from the Clerk. The Motions Judge shall:

- (1) hear emergency matters in the absence of the Judge assigned to the case; and
- (2) hear miscellaneous proceedings and applications in matters not previously assigned to a particular Judge.

Notes: Subparagraph (a) amended effective March 25, 1998.

### **Local Rule 41.1 - Dismissal of Actions for Failure to Prosecute**

Civil cases in which no action has been taken for a period of six (6) months may be dismissed for want of prosecution with judgment for costs after thirty (30) days' notice given by the assigned Judicial Officer or the Clerk to the attorneys of record (or, in the case of a *pro se* party, to the party) unless, for good cause shown, the Court orders otherwise.

Notes: Amended effective January 1, 2000.

### **Local Rule 42.1 - Juror Costs**

Whenever any civil action scheduled for jury trial is settled or otherwise disposed of in advance of the actual trial, then, except for good cause shown, juror costs, including marshal's fees, mileage and per diem, shall be assessed as agreed by the parties, or equally against the parties and/or their counsel, or otherwise assessed as directed by the Court, unless the Clerk's office is notified at least one (1) full business day prior to the day on which the action is scheduled for trial in time to advise the jurors that it will not be necessary for them to attend.

### **Local Rule 42.2 - Consolidation of Cases**

A motion to consolidate two or more civil cases pending upon the docket of the Court shall be filed in the case bearing the earliest docket number. That motion shall be ruled upon by the Judge to whom that case is assigned. In each case to which the consolidation motion applies, a copy of the moving papers shall be served upon all parties and a notice of consolidation motion shall be filed.

Notes: Adopted effective January 1, 2001.

### **Local Rule 47.1 - Voir Dire of Jurors**

The Court will conduct the voir dire examination in all jury cases. If counsel desires any particular area of interrogation or questions on voir dire examination, such proposal shall be filed with the Clerk of the Court at least twenty-four (24) hours before commencement of trial, or at such other time as the Court may order. The Court will give counsel an opportunity at the completion of the original voir dire to request that the Court ask such further questions as counsel shall deem necessary and proper and which could not have been reasonably anticipated in advance of trial. However, nothing in this Rule is intended to preclude or otherwise limit the Court, in any individual case, from allowing attorneys to conduct voir dire examination in any other manner as permitted by Rule 47, FED. R. CIV. P.

### **Local Rule 47.2 - Attorney Communication with Jurors**

No attorneys (or pro se litigants) appearing in this Court, or any of their agents or employees, shall approach, interview, or communicate with any member of the jury following a trial except on leave of Court granted upon notice to opposing counsel. In all criminal cases, any petition for leave of Court to make such contact or communication shall require showing of good cause.

No attorneys (or pro se litigants) appearing in this Court, or any of their agents or employees, shall approach, interview, or communicate before trial with members of the venire from which the jury will be selected, as well as any communication with members of the jury during trial or deliberations. Any juror contact permitted by the Court shall be subject to the control of the Judge.



### **Local Rule 47.4 - Six-Member Juries**

In all civil jury cases, the jury shall consist of six (6) members, unless otherwise provided by law, plus such additional jurors, if any, as the trial Judge shall designate.

Provided, however, that the Judge to whom the case is assigned may impanel a jury of not more than ten (10) members who shall constitute the jury to hear the particular civil case. Each person so impaneled shall be considered a member of the jury and the verdict shall be unanimous. Additional peremptory challenges may be permitted if more than six (6) jurors are to be seated, pursuant to Rule 47(b), FED. R. CIV. P.

In the event that it becomes necessary to excuse one (1) or more jurors for reasons the Court determines to be valid, the unanimous decision of six (6) or more jurors shall constitute the verdict of the case.

### **Local Rule 54.1 - Taxation of Costs and Attorney's Fees**

Except as otherwise provided by statute, Rule, or Court order, the parties shall have 14 days from the entry of final judgment to file and serve a Bill of Costs and a motion for the assessment of attorney fees. The Court prefers that any Bill of Costs be filed on AO form 133, which is available from the Clerk. This time may be extended by the Court for good cause shown. Failure to file such bill or motion or to obtain leave of Court for extensions of time within which to file shall be deemed a waiver of the right to recover taxable costs or attorney fees.

Comment:

Amended effective January 1, 2000, to bring Rule into compliance with *FED. R. CIV. P.* 54 and provide for uniformity in form of submissions.

## **Local Rule 56.1 - Summary Judgment Procedure**

(a) **Requirements for Moving Party.** A party filing a motion for summary judgment pursuant to FED. R. CIV. P. 56 must also serve and file the following:

- (1) a Statement of Material Facts (either as a section of the brief or as a separate document), in compliance with L.R. 56.1(f), as to which the moving party contends there is no genuine issue and that entitles the moving party to a judgment as a matter of law;
- (2) to the extent not previously filed, any affidavits and other admissible evidence the moving party relies upon to support the facts material to the motion, including, but not limited to, portions of depositions and discovery responses; and
- (3) a supporting brief.

(b) **Requirements for Non-Movant.** A party opposing a motion filed pursuant to FED. R. CIV. P. 56 must, on or before the 30th day after service of the motion, serve and file the following:

- (1) a Response to Statement of Material Facts (either as a section of the brief or as a separate document) in compliance with L.R. 56.1(f) that contains a response to each material factual assertion in the moving party's Statement of Material Facts, and if applicable, a separate Statement of Additional Material Facts that warrant denial of summary judgment;
- (2) to the extent not previously filed, any additional affidavits and other admissible evidence to support material facts the opposing party relies upon under L.R. 56.1(b)(1), including, but not limited to, portions of depositions and discovery responses; and
- (3) an answer brief.

(c) **Reply Brief.** On or before the 15th day after service of an opposing party's answer brief, the moving party may serve and file a reply brief. If the opposing party has submitted a Response to Statement of Material Facts and/or a Statement of Additional Material Facts, and if the moving party objects to the cited evidence, the moving party may submit a Reply to Response to Statement of Material Facts and/or a Reply to Statement of Additional Material Facts (either as a section of the brief or as a separate document) containing the objections on or before the due date for filing a reply brief that complies with L.R. 56.1(f)(1) and 56.1(f)(3)-(4).

(d) **New Evidence on Reply or Surreply.**

(1) At the time of filing its reply brief, the moving party may supplement its filing of admissible evidence under L.R. 56.1(a)(2) only to the extent such additional evidence responds to the opposing party's Response to Statement of Material Facts and/or Statement of Additional Material Facts, and in compliance with L.R. 56.1(f). Such evidence shall be specifically labeled Statement of Additional Evidence on Reply (either as a section of the brief or as a separate document).

(2) In the event the moving party submits any additional evidence with its reply brief or objects to the admissibility of evidence cited in opposition to the motion, the non-movant may file a Surreply to Additional Material Facts and/or a surreply brief responding only to the moving party's new evidence and/or objections no later than 7 days after service of the moving party's reply brief. A Surreply to Additional Material Facts shall comply with L.R. 56.1(f) and may be accompanied by additional evidence to the extent it is responsive to the moving party's new evidence and/or objections.

(3) Other than as specifically set forth above, evidence may not be filed on reply or following reply by either party without leave of Court.

(e) **Time for Submission.** Any motion for summary judgment shall be filed at such a time as to be fully briefed 120 days before the trial date unless an earlier or later deadline is provided by order (see L.R. 16.1) or the case management plan. Because of the potential impact on the trial date, motions for extension of time to file summary judgment or to serve and file supporting or opposing submissions under L.R. 56.1(b), (c) and (d) must specify the trial date and any other subsequent schedule or date that the extension might affect and must recite any previous extensions of time obtained. Extensions of time shall only be granted for good cause shown. The briefing schedule in this rule applies to any motion for summary judgment, notwithstanding the provisions of Local Rule 7.1.

(f) **Requirements for Factual Statements and Responses Thereto.**

(1) **Format and Numbering.** The Statement of Material Facts shall consist of numbered sentences. The Response to Statement of Material Facts must be numbered to correspond with the sentence numbers of the Statement of Material Facts, preferably with each respective factual statement repeated therein. Any Statement of Additional Material Facts must consist of numbered sentences and start with the next number after the last numbered sentence in the Statement of Material Facts. The Reply to Response to Statement of Material Facts, Reply to Statement of Additional Material Facts, Statement of Additional Evidence on Reply, and Surreply to Additional Material Facts must be numbered in a similar fashion, to correspond to the specific material fact to which they are responsive and with any additional facts numbered consecutively therefrom.

(2) **Format of Factual Assertions.** Each material fact set forth in a Statement of Material Facts, Response to Statement of Material Facts, Statement of Additional Material Facts, Statement of Additional Evidence on Reply, or Surreply to Additional Material Facts must consist of concise,

numbered sentences with the contents of each sentence limited as far as practicable to a single factual proposition. Each stated material fact shall be substantiated by specific citation to record evidence. Such citation shall be by page number and paragraph or line number, if possible.

(3) **Format of Objections to Asserted Material Facts or Cited Evidence.** Objections to material facts and/or cited evidence shall (to the extent practicable) set forth the grounds for the objection in a concise, single sentence, with citation to appropriate authorities.

(4) In addition to filing and exchange of all required documents in hard copy format, whenever possible, the parties should exchange their factual Statements in electronic format on 3.5" computer disk. In certain cases the Court may ask the parties to submit copies of all summary judgment filings in electronic format.

(g) **Effect of Factual Assertions.** In determining the motion for summary judgment, the Court will assume that the facts as claimed and supported by admissible evidence by the moving party are admitted to exist without controversy, except to the extent that such facts are specifically controverted or objected to in compliance with L.R. 56.1(f). The Court will also assume for purposes of deciding the motion that any facts asserted by an opposing party are true to the extent they are supported by the depositions, discovery responses, affidavits or other admissible evidence.

(h) **Definition of Material Fact.** For purposes of summary judgment, a material fact is a potentially outcome determinative fact.

(i) **Oral Argument or Hearing.** All motions for summary judgment will be considered as submitted for ruling without oral argument or hearing unless a request for such is granted under L.R. 7.5 or the Court otherwise directs.

(j) **Notice to Pro Se Litigants.** If a party is proceeding pro se and an opposing party files a motion for summary judgment, counsel for the moving party must submit a notice to the unrepresented opposing party that:

(1) briefly and plainly states that a fact stated in the moving party's Statement of Material Facts and supported by admissible evidence will be accepted by the Court as true unless the opposing party cites specific admissible evidence contradicting that statement of a material fact; and

(2) sets forth the full text of FED. R. CIV. P. 56 and S.D. IND. L.R. 56.1; and

(3) otherwise complies with applicable case law regarding required notice to pro se litigants opposing summary judgment motions.

(k) **Compliance**. The Court may, in the interests of justice or for good cause, excuse failure to comply strictly with the terms of this rule.

Local Rule 56.1 amended effective January 1, 2000. Previous major amendment enacted December 17, 1998, and effective as to any motions for summary judgment filed on or after January 1, 1999, further revised April 30, 1999.

## **Local Rule 65.2 - Motions for Preliminary Injunctions and Temporary Restraining Orders**

The Court will consider a request for preliminary injunction or for a temporary restraining order only when the moving party files a separate motion for such relief. If the motion is for a temporary restraining order, in addition to fully complying with all the requirements of *Federal Rule of Civil Procedure* 65(b), the moving party shall also file with its motion a supporting brief.

Amended effective January 1, 2000. This Rule was formerly numbered 65.1.

### **Local Rule 66.1 - Receiverships**

(a) Proceedings to Which This Rule is Applicable. This Rule is promulgated, pursuant to Rule 66 of the FED. R. CIV. P. for the administration of estates, other than the estates in bankruptcy, by receivers or by other officers appointed by the Court.

(b) Inventory and Appraisal. Unless the Court otherwise orders, a receiver or similar officer, as soon as practicable after his/her appointment and not later than thirty (30) days after he/she has taken possession of the estate, shall file an inventory and an appraisal of all the property and assets in his/her possession or in the possession of others who hold possession as his/her agent, and in a separate schedule, an inventory of the property and assets of the estate not reduced to possession by him/her but claimed and held by others.

(c) Periodic Reports. Within thirty (30) days after the filing of inventory, and at regular intervals of three (3) months thereafter until discharged, unless the Court otherwise directs, the receiver or other similar officer shall file reports of his/her receipts and expenditures and of his/her acts and transactions in an official capacity.

(d) Compensation of Receiver, Attorneys and Other Officers. In the exercise of its discretion, the Court shall determine and fix the compensation of receivers or similar officers and their counsel and the compensation of all others who may have been appointed by the Court to aid in the administration of the estate, and such allowances or compensation shall be made only on petition therefor and on such notice, if any, to creditors, and other interested persons as the Court may direct.

(e) Administration Generally. In all other respects the receiver or similar officer shall administer the estate as nearly as may be in accordance with the practice in the administration of estates in bankruptcy, except as otherwise ordered by the Court.



### **Local Rule 69.1 - Execution**

The procedure on execution, in proceedings supplementary to and in aid of a judgment, and in proceedings on and in aid of execution shall be in accordance with Rule 69, FED. R. CIV. P., and applicable state law.

### **Local Rule 69.2 - Discovery in Aid of Judgment or Execution**

Interrogatories. An order to answer interrogatories shall accompany each set of interrogatories served on a garnishee defendant and may be part of the same document or pleading. At a minimum, the order to answer interrogatories shall contain the following information:

- (1) that the plaintiff has a judgment against the defendant and the amount of the judgment;
- (2) that the garnishee defendant may answer the interrogatories in writing on or before the date specified or appear in Court and answer the interrogatories in person, at his/her option;
- (3) the time, date and place of the hearing; and
- (4) that any claim or defense to a proceedings supplemental or garnishment order to a garnishee defendant must be presented at the time and place of the hearing specified in the order to appear.

A copy of the motion for proceedings supplemental must be served on the garnishee defendant at the time the order to answer interrogatories and the interrogatories are served upon the garnishee defendant.

Further, if the order to answer interrogatories is to operate as a hold on a judgment defendant's depository account, the order shall comply with the applicable provisions of the Indiana Code.

### **Local Rule 69.3 - Final Orders in Wage Garnishment**

All final orders garnishing wages shall comply with Indiana Code § 24-4.5-5-105, et seq. and shall take effect after all prior orders in garnishment have been satisfied, and only one wage garnishment will be carried out by the garnishee defendant at a time.

### **Local Rule 69.4 - Body Attachments; Hearings**

Whenever a judgment debtor fails to appear for hearing, after proof of service and actual notice thereof is shown to the satisfaction of the Magistrate Judge, the Magistrate Judge may, in his/her discretion, recommend to the District Judge that a body attachment shall issue. Whenever a judgment defendant has been brought into Court on a body attachment, a hearing shall be conducted at the earliest convenience of the Court. Counsel for the plaintiff shall respond to the telephone request by Court personnel to appear at the hearing forthwith, and counsel shall be deemed to have consented to such notice to appear by requesting a body attachment. The hearing requires the presence of the attorney of record and clerical or secretarial personnel shall not appear to interrogate the attached judgment defendant. Failure to respond promptly to such a request may result in the discharge of the attached defendant or other such appropriate measures taken by the Court.

## **Local Rule 72.1 - Authority of United States Magistrate Judges**

Unless otherwise provided in these Rules, the term "United States Magistrate Judge" shall include full-time Magistrate Judges, part-time Magistrate Judges and Magistrate Judges recalled pursuant to 28 U.S.C. § 636(h).

(a) Duties under 28 U.S.C. § 636(a)(1) and (2). Each United States Magistrate Judge of this Court is authorized to perform the duties prescribed by 28 U.S.C. § 636(a)(1) and (2), and may exercise all the powers and duties conferred upon United States Magistrate Judges by statutes of the United States and the Federal Rules of Criminal Procedure which include, but are not necessarily limited to, the following:

(1) Acceptance of criminal complaints and issuance of arrest warrants or summonses. (Federal Rules of Criminal Procedure 4).

(2) Issuance of search warrants, including warrants based upon oral or telephonic testimony. (Federal Rules of Criminal Procedure 41).

(3) Conduct of initial appearance proceedings for defendants, informing them of the charges against them and of their rights, and imposing conditions of release. (Federal Rules of Criminal Procedure 5).

(4) Conduct of initial proceedings upon the appearance of an individual accused of an act of juvenile delinquency. (18 U.S.C. § 5034).

(5) Appointment of attorneys for defendants who are unable to afford or obtain counsel and approval of attorneys' expense vouchers in appropriate cases. (18 U.S.C. § 3006A).

(6) Appointment of counsel for a person, subject to revocation of probation, parole or supervised release (in which case preference shall be given to previously appointed counsel if such attorney is still available and willing to serve); in custody as a material witness; seeking relief under 28 U.S.C. §§ 2241, 2254, or 2255 or 18 U.S.C. § 4245; or for any person for whom the Sixth Amendment to the Constitution requires the appointment of counsel or for whom, in a case in which he/she faces loss of liberty, any federal law requires the appointment of counsel.

(7) Appointment of interpreters in cases initiated by the United States. (28 U.S.C. §§ 1827 and 1828).

(8) Direction of the payment of basic transportation and subsistence expenses for defendants financially unable to bear the costs of travel to required Court appearances. (18 U.S.C. § 4285).

- (9) Setting of bail for material witnesses. (18 U.S.C. § 3149).
- (10) Conduct of preliminary examinations. (Federal Rules of Criminal Procedure 5.1 and 18 U.S.C. § 3060).
- (11) Conduct of initial proceedings for defendants charged with criminal offenses in other districts. (Federal Rules of Criminal Procedure 40).
- (12) Conduct of detention hearings. (18 U.S.C. § 3142(f)).
- (13) Conduct of preliminary hearings for the purpose of determining whether there is probable cause to hold a probationer for a revocation hearing. (Federal Rules of Criminal Procedure 32.1(a)(1)).
- (14) Administration of oaths and taking of bail, acknowledgments, affidavits and depositions. (28 U.S.C. § 636(a)(2)).
- (15) Conduct of extradition proceedings. (18 U.S.C. § 3184).
- (16) Holding of individuals for security of the peace and for good behavior. (50 U.S.C. § 23).
- (17) Discharge of indigent prisoners or persons imprisoned for debt under process of execution issued by a federal Court. (18 U.S.C. § 3569 and 28 U.S.C. § 2007).
- (18) Issuance of attachments or orders to enforce obedience of Internal Revenue Service summonses to produce records or give testimony. (26 U.S.C. § 7604(b)).
- (19) Issuance of administrative inspection warrants. (In the Matter of Establishment Inspection of Gilbert and Bennett Manufacturing Co., 589 F.2d 1335, 1340-41 [7th Cir. 1979]).
- (20) Institution of proceedings against persons violating certain civil rights statutes. (42 U.S.C. § 1987).
- (21) Settling or certification of the non-payment of seamen's wages. (46 U.S.C. § 603).
- (22) Enforcement of awards of foreign consuls in differences between captains and crews of vessels of the consul's nation. (22 U.S.C. § 258(a)).
- (b)Disposition of Misdemeanor Cases -- 18 U.S.C. § 3401. A Magistrate Judge may:
- (1) Conduct the trial of persons accused of, and sentence persons convicted of, misdemeanors, including petty offenses committed within this district. Pursuant to 18 U.S.C. § 3401(a), each Magistrate Judge is hereby specially designated to exercise the jurisdiction conferred by such

section with the written consent of the defendant as provided in 18 U.S.C. § 3401(b); such trial shall be by jury in the case of all Class A misdemeanors unless waived in writing by the defendant;

(2) Direct the probation service of the Court to conduct a presentence investigation in any misdemeanor case; any appeal from the judgment of the Magistrate Judge shall be as provided in 18 U.S.C. § 3402.

(c) Determination of Non-Dispositive Pretrial Matters -- 28 U.S.C. § 636(b)(1)(A). A Magistrate Judge may hear and determine any procedural or discovery motion or other motion or pretrial matter in a civil or criminal case, other than the motions which are specified in Local Rule 72.1(d) of these Rules, in accordance with FED. R. CIV. P. 72(a).

(d) Recommendation Regarding Case - Dispositive Motions -- 28 U.S.C. § 636(b)(1)(B).

(1) A Magistrate Judge may submit to a Judge of the Court a report containing proposed findings of fact and recommendations for disposition by the Judge of the following pretrial motions in civil and criminal cases in accordance with Federal Rule of Civil Procedure 72(b):

(A) Motions for injunctive relief, including temporary restraining orders and preliminary and permanent injunctions;

(B) Motions for judgment on the pleadings;

(C) Motions for summary judgment;

(D) Motions to dismiss or permit the maintenance of a class action;

(E) Motions under Rule 12(b) of the FED. R. CIV. P.;

(F) Motions to involuntarily dismiss an action;

(G) Motions for review of default judgments;

(H) Motions to dismiss or quash an indictment or information made by a defendant;

(I) Motions to suppress evidence in a criminal case;

(J) Applications for post-trial relief made by individuals convicted of criminal offenses;

(K) Petitions for judicial review of administrative decisions regarding the granting of benefits to claimants under the Social Security Act, and related statutes;

(L) Petitions for judicial review of an administrative award or denial of licenses or similar privileges;

(2) Any objections to the Magistrate Judge's report and recommendation shall be filed with the Clerk in accordance with 28 U.S.C. § 636(b)(1), and failure to file timely objections within the ten (10) days after service shall constitute a waiver of subsequent review absent a showing of good cause for such failure.

(3) A Magistrate Judge may determine any preliminary matter and conduct any necessary evidentiary hearing or other proceeding arising in the exercise of the authority conferred by this subsection.

(e) Prisoner Cases under 28 U.S.C. §§ 2254 and 2255. A Magistrate Judge may perform any or all of the duties imposed upon a Judge by the Rules governing proceedings in the United States District Court under §§ 2254 and 2255 of Title 28 United States Code. In so doing, a Magistrate Judge may issue any preliminary orders and conduct any necessary evidentiary hearing or other appropriate proceeding and shall submit to a Judge a report containing proposed findings of fact and recommendations for disposition of the petition by the Judge. Any order disposing of the petition may only be made by a Judge. In the event no hearing is held by the Magistrate Judge, the Magistrate Judge may, pursuant to 28 U.S.C. § 636(b)(3) acting as legal advisor to the District Judge, submit to the Judge a proposed entry ruling on the motion. If the District Judge so directs, copies of such proposed ruling need not be served on the parties or counsel.

(f) Prisoner Cases under 42 U.S.C. § 1983. A Magistrate Judge may:

(1) Review prisoner suits for deprivation of civil rights arising out of conditions of confinement under § 1983 of Title 42, United States Code and issue any preliminary orders and conduct any necessary evidentiary hearing or other appropriate proceeding and shall submit to a Judge a report containing proposed findings of fact and recommendations for the disposition of the suits by the Judge. Any order disposing of prisoner suits challenging the conditions of their confinement may only be made by a Judge.

(2) Take on-site depositions, gather evidence, conduct pretrial conferences, or serve as a mediator at a holding facility in connection with civil rights suits filed by prisoners contesting conditions of confinement under § 1983 of Title 42 United States Code.

(3) Conduct periodic reviews of proceedings to insure compliance with previous orders of the Court regarding conditions of confinement.

(4) Review prisoner correspondence.

(g) Special Master References -- 28 U.S.C. § 636(b)(2). A Magistrate Judge may be designated by a Judge to serve as a Special Master in appropriate civil cases in accordance with 28



U.S.C. § 636(b)(2) and Rule 53 of the FED. R. CIV. P. Upon the consent of the parties, a Magistrate Judge may be designated by a Judge to serve as a Special Master in any civil case, notwithstanding the limitations of Rule 53(b) of the FED. R. CIV. P.

(h) Conduct of Trials and Disposition of Civil Cases Upon Consent of the Parties -- 28 U.S.C. § 636(c). Upon the consent of the parties, a full-time Magistrate Judge is hereby authorized and specially designated to conduct any or all proceedings in any civil case which is filed in this Court, including the conduct of a jury or non-jury trial, and may order the entry of a final judgment, in accordance with 28 U.S.C. § 636(c) and Federal Rule of Civil Procedure 73. Pursuant to 28 U.S.C. § 636(c)(1), upon the consent of the parties, pursuant to their specific written request, and upon certification by the Chief Judge of this Court that a full-time Magistrate Judge is not reasonably available in accordance with guidelines established by the judicial council of the circuit, any part-time Magistrate Judge who does not serve as a full-time judicial officer but who meets the bar requirements set forth in 28 U.S.C. § 631(b)(1), is hereby authorized and specifically designated by this Court to conduct any or all proceedings in a civil case, whether jury or non-jury. In the course of conducting such proceedings, upon consent of the parties, a Magistrate Judge may hear and determine any and all pretrial and post-trial motions which are filed by the parties, including case dispositive motions.

(i) Additional Duties -- 28 U.S.C. § 636(b)(3). A Magistrate Judge of this Court is also authorized to:

- (1) Exercise general supervision of civil and criminal calendars, including the handling of calendar and status calls, and motions to expedite or postpone the trial of cases for the Judges;
- (2) Conduct preliminary and final pretrial conferences, status calls, settlement conferences, and related pretrial proceedings in civil cases, and prepare a pretrial order following the conclusion of the final pretrial conference;
- (3) Conduct pretrial conferences, omnibus hearings, and related pretrial proceedings in criminal cases;
- (4) Conduct post-indictment arraignments, accept not guilty pleas, and order pre-sentence reports on defendants who signify the desire to plead guilty. (A Magistrate Judge, however, may not accept pleas of guilty or nolo contendere in cases outside the jurisdiction specified in 18 U.S.C. § 3401);
- (5) Receive grand jury returns in accordance with Rule 6(f) of the Federal Rules of Criminal Procedure;
- (6) Accept waivers of indictment, pursuant to Rule 7(b) of the Federal Rules of Criminal Procedure;

- (7) Issue subpoenas, writs of habeas corpus ad testificandum or habeas corpus ad prosequendum, or other orders necessary to obtain the presence of parties, witnesses or evidence needed for Court proceedings;
- (8) Hear and determine motions by the government to dismiss an indictment, information, or complaint without prejudice to further proceedings;
- (9) Conduct voir dire and select petit juries in civil cases for the Court;
- (10) Accept petit jury verdicts in civil cases in the absence of unavailability of a Judge;
- (11) Order the exoneration or forfeiture of bonds;
- (12) Conduct proceedings for the collection of civil penalties of not more than \$200.00 assessed under the Federal Boat Safety Act of 1971 in accordance with 46 U.S.C. §§ 4311(d), 12309;
- (13) Conduct examinations of judgment debtors in accordance with Rule 69 of the FED. R. CIV. P.;
- (14) Serve as eminent domain commissioner as provided in Rule 71A, FED. R. CIV. P.;
- (15) Perform the functions specified in 18 U.S.C. §§ 4107, 4108 and 4109, regarding proceedings for verification of consent by offenders to transfer to or from the United States and the appointment of counsel therein;
- (16) Serve as a member of this District's Speedy Trial Act Planning Group, including service as the reporter (18 U.S.C. § 1368);
- (17) Supervise proceedings on requests for Letters Rogatory in civil and criminal cases upon special designation by the District Court as required under 28 U.S.C. § 1782(a);
- (18) Hear and determine applications for admission to practice before this District Court;
- (19) Preside over naturalization ceremonies and administer the oath of renunciation and allegiance required by 8 U.S.C. § 1448(a). Following these ceremonies, a Magistrate Judge shall submit to a Judge of this Court a report containing the names of applicants who took the oaths administered. (A Magistrate Judge may not conduct final hearings or preliminary examinations of petitioners or witnesses, as those functions are expressly vested in naturalization examiners or in Judges by 8 U.S.C. §§ 1447(a) and (b)); and
- (20) Perform any additional duty as is not contrary to the law of this District and Circuit nor inconsistent with the Constitution and laws of the United States.

(j) Contempt Proceedings -- 28 U.S.C. § 636(e). In any proceeding before a Magistrate Judge in this district, any of the following acts or conduct shall constitute a contempt of the District Court: (1) disobedience or resistance to any lawful order, process, or writ; (2) misbehavior at a hearing or other proceeding, or so near the place thereof as to obstruct the same; (3) failure to produce, after having been ordered to do so, any pertinent document; (4) refusal to appear after having been subpoenaed or, upon appearing, refusal to take the oath or affirmation as a witness, or, having taken the oath or affirmation, refusal to be examined according to law; or (5) any other act or conduct which if committed before a Judge of this Court would constitute contempt of this Court. Upon the commission of any such act or conduct, the Magistrate Judge shall forthwith certify the facts to a Judge of this Court and may serve or cause to be served upon any person whose behavior is brought into question under this Rule an order requiring such person to appear before a Judge of this Court upon a day certain to show cause why he/she should not be adjudged in contempt by reason of the facts so certified. Such Judge shall thereupon, in a summary manner, hear the evidence as to the act or conduct complained of and, if it is such as to warrant punishment, punish such person in the same manner and to the same extent as for a contempt committed before a Judge of the Court, or commit such person upon the conditions applicable in the case of defiance of the process of the District Court or misconduct in the presence of a Judge of the Court.

### **Local Rule 72.2 - Forfeiture of Collateral in Lieu of Appearance**

(a) A person who is charged with an offense made criminal pursuant to 18 U.S.C. § 13, and for which the penalty provided by state law is equal to or less than that of a misdemeanor, other than an offense for which a mandatory appearance is required, may, in lieu of appearance, post collateral before a United States Magistrate Judge and consent to forfeiture of collateral. The offenses to which this Rule applies, together with the amounts of collateral to be posted, where applicable, shall appear on a schedule to be filed in the office of the Clerk of Court in each division of this district and available for public inspection. Such schedule shall be in effect until rescinded, amended or superseded by general order of the Court. The Clerk shall make copies of such schedule available to those legal publishing houses who publish for commercial distribution the Rules of this Court for inclusion of such schedule in any publication of the Rules of this Court.

(b) Upon the failure of the person charged with an offense to which this Rule applies to appear before the United States Magistrate Judge, the collateral posted shall be forfeited and the forfeiting of said collateral shall signify that the offender does not contest the charge or request a hearing before the United States Magistrate Judge. If collateral is forfeited, such action shall be tantamount to a finding of guilt.

(c) Forfeiture will not be permitted on violations contributing to an accident which results in personal injury. Arresting officers shall treat multiple and aggravated offenses as mandatory appearance offenses, and shall direct the accused to appear for a hearing. No forfeiture of collateral will be permitted in such cases.

(d) Nothing in this Rule shall prohibit a law enforcement officer from arresting a person for the commission of any offense, including those for which collateral may be posted and forfeited, and requiring the person charged to appear before a United States Magistrate Judge, or, upon arrest, taking the person immediately before a United States Magistrate Judge.

### **Local Rule 72.3 - Chief Magistrate Judge--Designation of Duties**

The full-time United States Magistrate Judge most senior in length of service shall be designated as the Chief United States Magistrate Judge for the Southern District of Indiana. The Chief United States Magistrate Judge, under the supervision of the Chief Judge of the district, shall have the authority to assign all matters, not hereinafter assigned, within the jurisdiction of the Magistrate Judges among the Magistrate Judges. Further, the Chief United States Magistrate Judge shall have general responsibility for the administration of the business of the Magistrate Judges subject to the Rules of the United States District Court and the orders of the Court or Chief Judge thereof. He or she shall serve as the spokesman for the Magistrate Judges in their relations with the United States District Court, the Administrative Office of the United States Courts, the United States Attorney, the criminal justice enforcement agencies, members of the bar, press and public.

### **Local Rule 76.1 - Designation of Pleadings on Appeal**

The attorney for the appellant shall file a designation of pleadings by docket description and docket number to be included with the record on appeal within ten (10) days of the filing of the notice of appeal. The appellee shall have ten (10) days thereafter to file an additional designation of pleadings, if any. The designation shall specifically indicate each pleading to be included, *i.e.*, name and date of filing of each pleading.

### **Local Rule 79.1 - Custody of Files and Exhibits**

(a) Custody During Pendency of Action. After being marked for identification, models, diagrams, exhibits and material offered or admitted in evidence in any cause pending or tried in this Court shall be placed in the custody of the Clerk, unless otherwise ordered by the Court, and shall not be withdrawn until after the time for appeal has run or the case is disposed of otherwise. Such items shall not be withdrawn until the final mandate of the reviewing Court is filed in the office of the Clerk and until the case is disposed of as to all issues, unless otherwise ordered.

(b) Removal After Disposition of Action. Subject to the provisions of subsections (a) and (d) hereof, unless otherwise ordered, all models, diagrams, exhibits or material placed in the custody of the Clerk shall be removed from the Clerk's office by the party offering them in evidence within ninety (90) days after the case is decided. In all cases in which an appeal is taken these items shall be removed within thirty (30) days after the mandate of the reviewing Court is filed in the Clerk's office and the case is disposed of as to all issues, unless otherwise ordered. At the time of removal a detailed receipt shall be given to the Clerk and filed in the cause. No motion or order is required as a prerequisite to the removal of an exhibit pursuant to this Rule.

(c) Neglect to Remove. Unless otherwise ordered by the Court, if the parties or their attorneys shall neglect to remove models, diagrams, exhibits or material within thirty (30) days after notice from the Clerk, the same shall be sold by the United States Marshal at public or private sale or otherwise disposed of as the Court may direct. If sold, the proceeds, less the expense of sale, shall be paid into the registry of the Court.

(d) Contraband Exhibits. Contraband exhibits, such as controlled substances, money, and weapons, shall be released to the investigative agency at the conclusion of the trial and not placed in the custody of the Clerk. A receipt shall be issued when such contraband exhibits are released.

(e) Withdrawal of Original Records and Papers. Except as provided above with respect to the disposition of models and exhibits, no person shall withdraw any original pleading, paper, record, model or exhibit from the custody of the Clerk or other officer of the Court having custody thereof except upon order of a Judge of this Court.

### **Local Rule 81.1 - Amendment of Complaint Following Removal of Certain Diversity Cases**

In any petition seeking the removal to this Court of any action in which unspecified monetary damages are sought for alleged personal injury or death and removal is premised in part or in whole on diversity jurisdiction pursuant to 28 U.S.C. § 1332(a), the petitioner shall certify that the amount of damages at issue satisfies the jurisdictional amount requirement and, unless the case is remanded, the plaintiff shall, within thirty (30) days following such removal, amend the complaint to comply with the jurisdictional amount requirements.



### **Local Rule 81.2 - Corporate Disclosure Statement**

Any nongovernmental corporate party to an action in this Court shall file a statement identifying all its parent corporations and listing any publicly held company that owns 10% or more of the party's stock. A party shall file the statement with its initial pleading filed in the Court and shall supplement the statement within a reasonable time of any change in the information.

*Adopted effective January 1, 2000.*

### **Local Rule 83.3 - Courtroom and Courthouse Decorum**

At its March 1979, meeting the Judicial Conference of the United States amended its March 1962 resolution pertaining to Courtroom photographs to read as follows:

"RESOLVED, That the Judicial Conference of the United States condemns the taking of photographs in the Courtroom or its environs in connection with any judicial proceedings, and the broadcasting of judicial proceedings by radio, television, or other means, and considers such practices to be inconsistent with fair judicial procedure and that they ought not be permitted in any federal Court. A Judge may, however, permit the broadcasting, televising, recording, or photographing of investitive, ceremonial, or naturalization proceedings."

In the Southern District of Indiana the term "environs" has been generally interpreted to mean all areas upon the same floor of the building on which a Courtroom is located.

Consistent with the Resolution of the Judicial Conference of the United States, and this Court's interpretation of the term "environs," the taking of photographs, sound recording (except by the official Court reporters in the performance of their duties), broadcasting by radio, television, or other means, in connection with any judicial proceeding on or from the same floor of the building on which a Courtroom is located are prohibited. Provided, however, that incidental to investitive, ceremonial or naturalization proceedings, a Judge of this Court may, in his/her discretion, permit the taking of photographs, broadcasting, televising, or recording.

### **Local Rule 83.5 - Bar Admission**

(a) Bar Membership. In all cases filed in, removed to, or transferred to this Court, all parties, except as provided in subsection (c), must be represented of record by a member of the bar of this Court. The bar of this Court shall consist of persons heretofore and hereafter admitted to practice by this Court and who have signed the roll of attorneys, who have not been disbarred or suspended, or who have not resigned.

(b) Admission. Any attorney admitted to practice by the Supreme Court of the United States or the highest Court of any state may become a member of the bar of this Court upon motion by a member of the bar of this Court, if the Court is satisfied that the applicant's private and professional character is good from the assurance of the movant or upon report of a committee appointed by the Court. Upon being admitted, the applicant shall take a prescribed oath or affirmation; pay the required fees (except law clerks to Judges of this Court shall not be required to pay such fees); sign the roll of attorneys; give a current post office address, and agree to notify the Clerk promptly of any change thereof, whereupon the attorney's admission will be entered upon the records of this Court with certificate to issue accordingly.

(c) Pro Se, Pro Hac Vice, and United States Government Appearances. A person not a member of the bar of this Court shall not be permitted to practice in this Court or before any officer thereof as an attorney, unless (1) such person appears on his/her own behalf as a party, or (2) such person is admitted to practice in any other United States Court or the highest Court of any state, is not currently under suspension or subject to other disciplinary action with respect to his or her practice, and is, on application to this Court and payment of the required filing fee, granted leave to appear in a specific action, or (3) such person appears as attorney for the United States.

(d) Local Counsel. Whenever necessary to facilitate the conduct of litigation, this Court may require any attorney appearing in any action in this Court who resides outside this district to retain as local counsel a member of the bar of this Court who is resident of this district. Notice of unscheduled meetings, hearings, and other matters served upon such local counsel shall constitute service upon all other counsel appearing of record for such party.

(e) Sanctions. Any member of the bar of this Court and any attorney appearing in any action in this Court may, for good cause shown and after an opportunity has been given to him/her to be heard, be disbarred or suspended from practice in this Court or reprimanded, as provided in this Court's Rules of Disciplinary Enforcement.

(f) Standards. The Rules of Professional Conduct, as adopted by the Indiana Supreme Court, shall provide standards of conduct for those practicing in this Court.

Notes: Subsection (c) amended effective January 1, 2001, to require that attorneys appearing *pro hac vice* not be under suspension or subject to disciplinary action with regard to their practice.

### **Local Rule 83.7 - Appearance and Withdrawal of Appearance**

(a) Any attorney representing a party other than plaintiff or petitioner shall first file his/her formal written appearance for such party upon the form furnished therefor by the Clerk.

(b) Counsel desiring to withdraw his/her appearance in any action shall file a petition requesting leave to do so. Such petition shall fix a date for such withdrawal, and petitioning counsel shall file with the Court satisfactory evidence of written notice to his/her client at least five (5) days in advance of such withdrawal date.

(c) A withdrawal of appearance when accompanied by the appearance of other counsel shall constitute a waiver of the provisions of paragraph (b) of this Rule.

## **CRIMINAL RULES**

### **Local Criminal Rule 1.1 - Bail in Criminal Cases**

(a) The conditions of release of defendants and material witnesses are set forth in 18 U.S.C. § 3141, et seq., and Rule 46, Federal Rules of Criminal Procedure.

(b) When the appearance of a person in a criminal case is required by the Court to be secured by a surety,

(1) every surety except a corporate surety must own fee simple title to real estate, unencumbered except for current taxes and the lien of a first mortgage. The surety's equity in such property shall have a fair market value at least double the penalty of said bond; provided, however, that a proposed surety whose real estate is then subject to an existing appearance bond in this Court or in any other Court in this district, including, state, county or municipal Courts, shall not be accepted as a surety; and

(2) a corporate surety must hold a certificate of authority from the Secretary of the Treasury and must act through a bondsman registered with the Clerk of this Court.

(c) No person who executes appearance bonds for a fee, price or other valuable consideration shall be eligible as a surety on any appearance bond unless such person be a corporate surety which is approved as provided by law.

### **Local Criminal Rule 2.1 - Standard Orders in Criminal Cases**

The Court may issue a standard order in a criminal case which contains provisions for a plea of not guilty, a change of plea, trial date, attorney appearances, pretrial discovery, pretrial motions, plea agreement, and other matters. When such a standard order is issued, it shall be served on the defendant with the indictment or information. Copies of the form standard order are available from the Clerk of the Court.

### **Local Criminal Rule 3.1 - Provisions for Special Orders in Appropriate Cases**

(a) On motion of any party or on its own motion, when the Court deems it necessary, to preserve decorum and to maintain the integrity of the trial, the Court may issue a special order governing such matters as extra-judicial statements by parties and witnesses likely to interfere with the rights of any party to a fair trial, the seating and conduct in the Courtroom of parties, attorneys and their staff, spectators and news media representatives, the management and sequestration of jurors and witnesses, and any other matters which the Court may deem appropriate for inclusion in such an order. Such special order may be addressed to some or all, but not limited to the following subjects:

(1) A proscription of extra-judicial statements by participants in the trial, including lawyers and their staff, parties, witnesses, jurors, and Court officials, which might divulge prejudicial matter not of public record in the case.

(2) Specific directives regarding the clearing of entrances to and hallways in the Courthouse and respecting the management of the jury and witnesses during the course of the trial to avoid their mingling with or being in the proximity of reporters, photographers, parties, lawyers, and others, both in entering and leaving the Courtroom and Courthouse, and during recesses in the trial.

(3) A specific direction that the jurors refrain from reading, listening to, or watching news reports concerning the case, and that they similarly refrain from discussing the case with anyone during the trial and from communicating with others in any manner during their deliberations.

(4) Sequestration of the jury on motion of any party or the Court, without disclosure of the identity of the movant.

(5) Direction that the names and addresses of the jurors or prospective jurors not be publicly released except as required by statute, and that no photograph be taken or sketch made of any juror within the environs of the Court.

(6) Insulation of witnesses from news interviews during the trial period.

(7) Specific provisions regarding the seating of parties, attorneys and their staff, spectators and representatives of the news media.

(b) Unless otherwise permitted by law and ordered by the Court, all preliminary criminal proceedings, including preliminary examinations and hearings on pretrial motions, shall be held in open Court and shall be available for attendance and observation by the public.

If the Court orders closure of a pretrial hearing pursuant to this Rule, it shall cite for the record its specific findings that compel the need for same.



#### **Local Criminal Rule 4.1 - Release of Information by Court Supporting Personnel**

All Court supporting personnel, including among others, Marshals, Deputy Marshals, Court Clerks, Deputy Court Clerks, Bailiffs, and Court or Grand Jury reporters and their employees or subcontractors, are prohibited from disclosing to any person, without authorization by the Court, information relating to a grand jury or pending criminal case that is not part of the public records of the Court. This Rule shall be applicable also to divulgence of information concerning grand jury proceedings, arguments, hearings held in chambers or otherwise outside the presence of the public.

## **Local Criminal Rule 5.1 - Release of Information by Attorneys in Criminal Cases**

It is the duty of the attorneys for the government and the defense, including the law firm, not to release or authorize the release of information or opinion which a reasonable person would expect to be disseminated by any means of public communication, in connection with pending or imminent criminal litigation with which a lawyer or a law firm is associated, if such dissemination poses a serious and imminent threat of interference with the fair administration of justice.

The following actions will presumptively be deemed to pose a serious and imminent threat of interference with the fair administration of justice:

(a) With respect to a grand jury or other pending investigation of any criminal matter, the release, by a government lawyer participating in or associated with the investigation, of any extra-judicial statement, which a reasonable person would expect to be disseminated by any means of public communication, that goes beyond the public record or that is not necessary to inform the public that the investigation is under way, to describe the general scope of the investigation, to obtain assistance in the apprehension of a suspect, to warn the public of any dangers or otherwise to aid in the investigation.

(b) From the time of arrest, issuance of an arrest warrant or the filing of a complaint, information, or indictment in any criminal matter until the commencement of trial or disposition without a trial, the release or giving of authority to release by a lawyer or law firm associated with the prosecution or defense, of any extra-judicial statement, which a reasonable person would expect to be disseminated, by any means of public communication, relating to that matter and concerning:

- (1) the prior criminal record (including arrests, indictments, or other charges of crime), or the character or reputation of the accused, except a factual statement of the accused's name, age, residence, occupation, and family status, and if the accused has not been apprehended, the release by a lawyer associated with the prosecution of any information necessary to aid in the apprehension of the accused or to warn the public of any dangers he/she may present;
- (2) the existence or contents of any confession, admission, or statement given by the accused, or the refusal or failure of the accused to make any statement;
- (3) the performance of any examinations or tests or the accused's refusal or failure to submit to an examination or test;
- (4) the identity, testimony, or credibility of prospective witnesses, except announcement of the identity of the victim if the announcement is not otherwise prohibited by law;
- (5) the possibility of a plea of guilty to the offense charged or a lesser offense;

- (6) any opinion as to the accused's guilt or innocence or the evidence in the case.

The foregoing shall not be construed to preclude the lawyer or law firm during this period, in the proper discharge of his/her or its official or professional obligations, from announcing the fact and circumstances of arrest (including time and place of arrest, resistance, pursuit, and use of weapons), the identity of the investigating and arresting officer or agency, and the length of the investigation; from making an announcement, at the time of seizure of any physical evidence other than a confession, admission or statement, which is limited to a description of the evidence seized; from disclosing the nature, substance, or text of the charge, including a brief description of the offense charged; from quoting or referring without comment to public records of the Court in the case; from announcing the scheduling or result of any stage in the judicial process; from requesting assistance in obtaining evidence; or from announcing without further comment that the accused denies the charges made against him/her and stating without elaboration the general nature of the defense.

(c) During a trial of any criminal matter, or any other proceeding that could result in incarceration, including a period of selection of the jury, the release or giving authority to release by a lawyer associated with the prosecution or defense, of any extra-judicial statement or interview, relating to the trial or the parties or issues in the trial, which a reasonable person would expect to be disseminated by any means of public communication, other than a quotation from or reference without comment to public records of the Court in the case.

Nothing in this Rule is intended to preclude the formulation or application of more restrictive Rules relating to the release of information about juvenile or other offenders, to preclude the holding of hearings or the lawful issuance of reports by legislative, administrative, or investigative bodies, or to preclude any lawyer from replying to charges of misconduct that are publicly made against him.

**Local Criminal Rule 6.0 - Petitions for Habeas Corpus Motions Pursuant to  
28 U.S.C. Sections 2254 and 2255 by Persons in Custody**

Petitions for writs of habeas corpus and motions filed pursuant to 28 U.S.C. Sections 2254 and 2255 by persons in custody shall be in writing and signed under the penalty of perjury. Such petitions and motions shall be on the form contained in the Rules following 28 U.S.C. Section 2254, in the case of a person in state custody, or 28 U.S.C. Section 2255, in the case of a person in federal custody, or on forms adopted by general order of this Court, copies of which may be obtained from the Clerk of the Court.

**Local Criminal Rule 6.1 - Petitions Pursuant to 28 U.S.C. Sections 2254 and 2255 in Cases Involving Petitioners Under a Sentence of Capital Punishment**

In all petitions within the scope of this Rule, the petitioner or movant shall file, within ten (10) days of the day of filing of the petition or motion, a legible copy of the documents listed below. If a required document is not filed, the petitioner or movant shall state the reason for the omission. The required documents are:

(a) prior petitions, with docket numbers, filed in any state or federal court challenging the conviction and sentence challenged in the current petition; and

(b) a copy of, or a citation to, each state or federal court opinion, memorandum decision, order, transcript of oral statement of reasons, or judgment involving an issue presented in the petition.

Amended effective January 1, 2000.

**Local Criminal Rule 6.2 - Appointment and Compensation of Counsel in Initial Petitions  
Brought Pursuant to 28 U.S.C. Section 2254 in Cases Involving Petitioners under a  
Sentence of Capital Punishment**

(a) Applicability. This Rule shall govern the procedures for a first petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254 in which a state prisoner seeks relief from a judgment imposing a sentence of death. A subsequent filing may be deemed a first petition under this Rule if the original filing was not disposed of on the merits. The application of this Rule may be modified by the Judge to whom the petition is assigned. This Rule shall supplement the "Rules Governing Section 2254 Cases in the United States District Courts" and does not in any regard alter or supersede those Rules.

(b) Clerk to Maintain the Records of status of cases; Request to Attorney General of Indiana. The Clerk shall request from the Indiana Attorney General, insofar as reasonably available, information pertaining to the movement of cases through the Indiana courts in which a prisoner is under sentence of death from an Indiana Court and as to which the judgment of conviction and sentence have been affirmed by the Supreme Court of Indiana. This information shall include the following: defendant's name, court imposing sentence, date of affirmance on direct appeal by the Supreme Court of Indiana, date that denial of postconviction relief petition was affirmed by the Supreme Court of Indiana, and the execution date, if any.

(c) Notice of Intention to File Petition. Whenever it is determined that a prisoner under sentence of death from an Indiana court will file a first petition for relief in this Court, either counsel or the prisoner may file with the Clerk a "Notice of Intention to File First Petition for a Writ of Habeas Corpus." Each such Notice shall be on the form set out in Appendix A to this Rule or in substantially similar terms. Forms shall be available from the Clerk. The failure to submit such a Notice shall not preclude the filing of a petition.

(d) Action by Court Upon Filing of Notice. Upon the submission of such a Notice the Clerk shall refer it immediately in accordance with the provisions of subsection (e) of this Rule.

The Clerk shall forward copies of the Notice, together with copies of any motions or requests submitted therewith, and any rulings thereon, to the following: (i) the prosecution attorney of the county in which the sentence was imposed; (ii) the prisoner; (iii) the last attorney of record in the Indiana courts (if known); (iv) the Indiana Attorney General; (v) the Commissioner of the Indiana Department of Correction; (vi) the Warden or Superintendent of the institution where the prisoner is confined; (vii) the Supreme Court Administrator of the State of Indiana; (viii) the Chief Judge of the Circuit; (ix) the Indiana Public Defender; and (x) the Court which imposed sentence.

(e) Appointment of Counsel.

(1) Motions or requests for the appointment of counsel shall be presented to, and counsel appointed by, the Judge to whom such action is assigned.

(2) Counsel shall be appointed from a panel established by the Clerk for the representation of defendants/petitioners in cases involving the death penalty. Members of that panel shall meet the qualifications set out in subparagraph (f) of this Rule. The Court may in its discretion appoint counsel notwithstanding the requirements of this paragraph and of subsection (f) if the exigencies of the case require it.

(f) Qualifications of Appointed Counsel.

(1) Lead Counsel; Qualifications. One of the attorneys appointed by the Court shall be designated as lead counsel. To be eligible to serve as lead counsel, an attorney shall:

(A) be an experienced and active practitioner with at least five years of litigation experience, at least three years' experience in the handling of appeals;

(B) have prior experience in at least one case, as appellate counsel in state appeal or postconviction proceedings or in federal habeas corpus proceedings, in which the death penalty was imposed; and

(C) have completed within two years prior to appointment at least twelve hours of training in the defense of capital cases, of which six hours must relate to federal habeas corpus proceedings; or, in the alternative, be recommended for appointment by the Director of the Federal Resource Center for Indiana.

(2) Co-Counsel, Qualifications. The remaining attorney shall be designated as co-counsel. To be eligible to serve as co-counsel an attorney shall:

(A) be an experienced and active practitioner with at least three years of litigation experience; and

(B) have completed within two years prior to appointment at least twelve hours of training in the defense of capital cases, of which six hours must relate to federal habeas corpus proceedings; or, in the alternative, be recommended for appointment by the Director of the Federal Resource Center for Indiana.

At least one of the attorneys appointed shall (1) have least three years' experience in handling appeals in a federal court of appeals in felony cases, and (2) be admitted to practice in a federal court of appeals for at least five years.

(3) Workload of Appointed Counsel. In the appointment of counsel, the appointing Judge may consider the nature and volume of the workload of appointed counsel to assure that counsel can direct sufficient attention to the case.

Attorneys accepting appointments pursuant to this Rule shall provide each client with quality representation in accordance with professional standards. Appointed counsel shall not accept workloads which, by reason of their excessive size, interfere with the rendering of quality representation or lead to the breach of professional obligations.

(g) Compensation of Appointed Counsel. Appointed counsel shall be entitled to compensation in accordance with 21 U.S.C. § 848(q)(10), at an hourly rate which shall be established from time to time by the order of the Judges of this Court. To obtain payment, counsel shall present a claim for services detailing the date, activity, and time duration for which compensation is sought. Counsel may submit interim statements on a frequency not greater than monthly.

Counsel may also obtain approval for, and submit claims for payment of, investigative, expert or other services reasonably necessary, as provided for by 21 U.S.C. § 848(q)(9).

(h) Motions for Stay of Execution.

(1) Initial Filings. If a Notice of Intention to File First Petition for Writ of Habeas Corpus pursuant to Local Rule 6.2(c) is accompanied by a Motion or Request for Stay of Execution, the Court may grant a stay of execution. The Court may attach appropriate conditions to the issuance or continuation of the stay.

(2) Second and Successive Petitions. In the case of a second or successive petition, no motion for a stay of execution shall be filed unless accompanied by a petition for relief under 28 U.S.C. § 2254 which comports with this Rule. The movant shall immediately notify opposing counsel by telephone of the filing.

(3) The movant shall attach to the motion for stay a legible copy of the documents listed in section (b) of this Rule, unless the documents have already been filed with the Court. If the movant asserts that time does not permit the filing of a written motion, he or she shall deliver to the Clerk a legible copy of the listed documents as soon as possible. If a required document is not filed, the movant shall state the reason for the omission.

(4) If the state has no objection to the motion for stay, the Court shall enter an order staying the execution.

(5) If the Court determines that the petition or motion is not frivolous and a stay is requested, it shall enter an order staying the execution.



(6) Following a decision on the merits, if the Court issues a certificate of appealability, it shall enter an order staying the execution pending appeal. If the Court denies a certificate of appealability, it shall not enter an order staying the execution pending appeal and it shall dissolve any stay of execution previously granted to petitioner by the Court.

(7) Parties shall file motions with the Clerk during the normal business hours of the Clerk's Office. The motion shall contain a brief account of the prior actions of any Court or Judge to which the motion or a substantially similar or related petition for relief has been submitted.

(8) The Clerk shall adopt procedures for filing of emergency motions or applications pursuant to this Rule when the Clerk's Office is closed.

(9) The Clerk shall maintain a separate list of all cases within the scope of this Rule.

Subsection (d) amended and subsection (h) added effective January 1, 2000.

### **Local Criminal Rule 7.1 - Continuance in Criminal Cases**

A motion for continuance in a criminal case will be granted only if the moving party demonstrates that the ends of justice served by a continuance outweigh the best interest of the public and the defendant to a speedy trial, as provided by 18 U.S.C. §3161(h)(8), or that the continuance will not violate the Speedy Trial Act deadlines for trial because of some other reason. The moving party shall submit with the motion a proposed entry setting out the findings as to these ends of justice, or such other reason why the continuance will not violate the Speedy Trial Act, 18 U.S.C §3151 *et seq.*

### **Local Criminal Rule 8.1 - Assignment of Related Cases**

When a pending indictment or information is superseded by an indictment or information charging one or more of the defendants charged in the pending indictment or information and charging one or more of the offenses charged in the original indictment or information growing out of one or more occurrences which gave rise to the original charge, the superseding indictment or information shall be assigned to the same Judge to whom the first case is assigned. When two or more indictments or criminal informations are filed against the same person or persons, corporation or corporations, charging like offenses or violations of the same statute, each of such cases shall be assigned to the Judge to whom the first of such cases is assigned. Further, when an indictment or information is pending against a defendant, all subsequent indictments or informations against the same defendant which may be returned or filed shall be assigned to the same Judge.

### **Local Criminal Rule 9.1 - Processing of Cases in Division Without a Resident Judge**

(a) In any criminal case presided over by a Judge to whom such case was not regularly assigned upon its filing, in which there is more than one defendant and in which one or more but not all of the defendants enter a plea of guilty, the Judge taking such plea shall retain control over the defendant or defendants making such plea and proceed toward final disposition of the case in so far as it concerns such defendants. The Judge may then elect to retain the case in his/her control for purposes of trial and final disposition as to the remaining defendants or may refer the case back to the Judge to whom such case was originally assigned.

(b) In any criminal case in which a defendant enters a plea of guilty or is found guilty upon trial, the Judge taking such plea or presiding at trial, as the case may be, shall retain control of such case for disposition and sentencing.

### **Local Criminal Rule 10.1 - The Grand Jury**

(a) A regular session of the grand jury shall be called on the second Monday of February and August in each year, and shall serve for a six-month term. Each Indianapolis-based Judge shall in rotation impanel the grand jury.

(b) A petition to extend the session of a grand jury impaneled pursuant to this Rule shall be made to and decided by the Judge who impaneled that grand jury, the Motions Judge, or the Chief Judge.

(c) Each newly impaneled grand jury shall be assigned a number on the miscellaneous docket. All motions, orders, and other filings pertaining to matters before that grand jury shall bear that particular docket number and shall be maintained by the Clerk under seal, without the necessity for a motion to seal or order.

(d) All pre-indictment challenges to grand jury subpoenas or grand jury proceedings shall be made in writing and filed with the Clerk, and shall recite all pertinent facts including the grand jury number, the date of service of the subpoena, the appearance or production date of the subpoena, and the law. Such matters shall be ruled on by the District Judge who impaneled the grand jury, or, in his/her absence, the Motions Judge or the Chief Judge.

(e) Motions to quash the appearance of a witness or the production of records commanded by grand jury subpoena shall be filed and served upon the United States no later than 48 hours prior to the appearance or production date unless good cause exists for a later filing.

(f) Upon the filing of any objection to a grand jury subpoena, the appropriate District Judge will endeavor to rule upon the motion on or prior to the return date of the subpoena.

**Local Criminal Rule 11.1 - Records Relating to Presentence  
Reports and Probation Supervision**

(a) Records maintained by the Probation Office of this Court relating to the preparation of presentence investigation reports are considered to be confidential. Such information may be released only by Order of the Court. Requests for such information in a presentence report being released shall be by written petition establishing, with particularity, the need for specific information contained in such reports.

(b) When a demand by way of subpoena or other judicial process is made of the probation officer either for testimony concerning information contained in such presentence reports or for copies of the presentence reports, the probation officer may petition the Court for instructions. The probation officer shall neither disclose the information nor provide the presentence report or copies of the presentence report except on Order of this Court or as provided in Rule 32(b)(3) of the Federal Rules of Criminal Procedure.

(c) Supervision records on persons under probation supervision are considered to be confidential. The occasional need to release information on probationers to governmental agencies is recognized as being conducive to the rehabilitative process. In those infrequent cases, the Chief U.S. Probation Officer has in his/her discretion the authority to release or not release the requested information.

(d) The operation of Rule 32(b)(6)(A) of the Federal Rules of Criminal Procedure in this District is suspended insofar as the Rule would otherwise require disclosure of a probation officer's recommendation other than to the Court.

## APPENDIX A

### Notice of Intention to File First Petition for Writ of Habeas Corpus by Person in State Custody under Sentence of Death

The undersigned, being either counsel in the Indiana courts for a person under a sentence of death imposed by an Indiana court or such a person, hereby gives notice to the Clerk of the United States District Court for the Southern District of Indiana that such person will in the near future file a petition attacking such sentence or the underlying conviction or both.

The name of the person under sentence of death is \_\_\_\_\_, his inmate number within the Department of Correction is \_\_\_\_\_ and he is presently confined at the \_\_\_\_\_ (insert name of the institution where confined). In connection with this Notice the following representations are made:

1. The sentence of death was imposed by the \_\_\_\_\_  
(insert name of court) in cause number \_\_\_\_\_ ;

2. The sentence and the underlying conviction have been appealed to the Indiana Supreme Court and the appeal and postconviction proceedings were concluded in that Court on \_\_\_\_\_  
\_\_\_\_\_ (insert dates of decision of the Indiana Supreme Court on direct appeal and, if applicable, on the denial of postconviction relief);

3. The person under sentence of death will/will not (select one) be represented by counsel when a petition for relief is presented to the United States District Court;

4. There is presently no date of execution set; or an execution date of \_\_\_\_\_  
(insert date);

5. The person under sentence of death will/will not (select one) seek a stay of execution before/upon (select one) the filing of the petition for relief referred to in this Notice and will/will not (select one) be seeking the appointment of counsel to represent him in the proceeding.

6. This Notice is accompanied by the \$20.00 docketing fee prescribed by 28 U.S.C. § 1914(a) or submitted by or on behalf of a person without sufficient funds to prepay the \$20.00 docketing fee.

Date: \_\_\_\_\_

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name)

# **LOCAL RULES OF ALTERNATIVE DISPUTE RESOLUTION**

## **PREAMBLE**

These Rules have been adopted to provide uniform procedures for utilizing mediation in the resolution of certain cases in this Court, with the view that the interests of the parties before the Court may be better served by alternatives to the traditional adversarial litigation process. Mediation as provided under these Rules is a separate, alternative method of dispute resolution and does not preclude settlement conferences and mediation conducted by the District Judges or Magistrate Judges of the Court. The parties may also voluntarily pursue other forms of alternative dispute resolution not provided for under these Rules.

## **RULE 1. GENERAL PROVISIONS**

### **RULE 1.1 SCOPE OF THE RULES**

**(a) Title and Citation.** These Rules shall be known as the Local Alternative Dispute Resolution Rules of the United States District Court for the Southern District of Indiana. They shall be cited as “S.D.Ind. Local A.D.R. Rule \_\_\_\_\_.”

**(b) Scope of the Rules.** The alternative dispute resolution method governed by these Rules is mediation. Any individual who serves as the primary facilitator for mediation under these Rules is referred to herein as the Mediator.

Settlement conferences conducted by the Judges and Magistrate Judges of the Court are not governed by these Rules.

### **RULE 1.2 APPLICATION OF ALTERNATIVE DISPUTE RESOLUTION**

Unless limited by specific provisions, or unless there are other applicable specific statutory, common law, or constitutional procedures, these Rules shall apply in all civil litigation filed in the U.S. District Court for the Southern District of Indiana, except in the following cases and proceedings:

- (a)** Applications for writs of habeas corpus under 28 U.S.C. § 2254;
- (b)** Forfeiture cases;
- (c)** Non-adversary proceedings in bankruptcy;



(d) Social Security administrative review cases; and

(e) Such other matters as specified by order of the Court; for example, matters involving important public policy issues, constitutional law, or the establishment of new law.

### **RULE 1.3 IMMUNITY FOR MEDIATORS ACTING UNDER THESE RULES**

To the extent permitted under applicable law, each Mediator shall have immunity in the performance of his or her duties under these Rules, in the same manner, and to the same extent, as would a duly appointed Judge.

### **RULE 1.4 JURISDICTION OF PROCEEDING**

At all times during the course of mediation, the case remains under the jurisdiction of the Judge to whom the case is assigned on the Court docket.

For good cause shown the assigned Judge at any time may terminate the mediation.

### **RULE 1.5 OTHER METHODS OF DISPUTE RESOLUTION**

These Rules shall not preclude the parties from utilizing any other reasonable method or technique of alternative dispute resolution to resolve disputes to which the parties agree. However, any use of arbitration by the parties will be governed by and comply with the requirements of 28 U.S.C. §§ 654 - 657.

### **RULE 1.6 CONFIDENTIALITY OF PROCEEDINGS**

Any written or oral communications made during the course of any processes or proceedings covered under these Rules are confidential unless otherwise agreed by the parties. The unauthorized disclosure of any confidential communications by any persons may result in the imposition of sanctions pursuant to Rule 2.10.

Mediation shall be regarded as settlement negotiations as governed by FED. R. EVID. 408.



## **RULE 1.7 DISQUALIFICATION OF MEDIATORS**

In any case in which a Mediator has been selected by the parties or appointed by the Court, the Mediator shall disqualify himself or herself from the proceeding if and when his or her impartiality might reasonably be questioned. In addition, each Mediator shall be subject to the disqualification rules found in 28 U.S.C. § 455.

In any case in which a party reasonably believes an appointed Mediator should be disqualified, a Request for Disqualification of Mediator, setting forth the grounds therefor, shall be filed with the Clerk for consideration by the Court.

## **RULE 1.8 DESIGNATION OF ADMINISTRATOR**

The Clerk and his/her designee shall serve as administrators of the processes covered under these Rules.

## **RULE 2. MEDIATION**

### **RULE 2.1 PURPOSE**

Mediation under this section involves the confidential process by which a person acting as a Mediator, selected by the parties or appointed by the Court, assists the litigants in reaching a mutually acceptable agreement. It is an informal and nonadversarial process. The role of the Mediator is to assist in identifying the issues, reducing misunderstandings, clarifying priorities, exploring areas of compromise, and finding points of agreement as well as legitimate points of disagreement. Final decision-making authority rests with the parties, not the Mediator.

It is anticipated that an agreement may not resolve all of the disputed issues, but the process, nonetheless, can reduce points of contention. Parties and their representatives are required to mediate in good faith, but are not compelled to reach an agreement.

### **RULE 2.2 CASE SELECTION**

The Court with the agreement of the parties may refer a civil case for mediation. Unless otherwise ordered, referral to mediation does not abate or suspend the action, and no scheduled dates shall be delayed or deferred, including the date of trial.

## **RULE 2.3 LISTING OF MEDIATORS: COMMISSION REGISTRY OF MEDIATORS**

Any person who wishes to serve as a Mediator pursuant to these Rules must be registered with and satisfy the requirements of the Indiana Supreme Court Commission for Continuing Legal Education (hereinafter "Commission").

## **RULE 2.4 SELECTION OF MEDIATORS**

Upon the issuance of an order referring a case to mediation, the parties may, within fifteen (15) days of referral: (1) choose a Mediator from the Commission's registry, or (2) agree upon a non-registered Mediator and notify the Court in writing of the agreement, providing the name and address of the selected Mediator. In the event a Mediator is not selected by agreement, the Court will designate three (3) registered Mediators from the Commission's registry who are willing to mediate within the Southern District of Indiana. Each side alternately shall strike the name of one Mediator. The side initiating the lawsuit will strike first. The Mediator remaining after the striking process will be deemed the selected Mediator.

A person selected to serve as a Mediator under this Rule may choose not to serve for any reason. At any time, a party may request that the Court replace the Mediator for good cause shown. In the event a Mediator chooses not to serve or the Court orders the replacement of the Mediator, the selection process will be repeated.

## **RULE 2.5 MEDIATION COSTS**

**(a) Mediation Fee.** Each Mediator to whom a civil action is referred shall be compensated at a rate agreed upon by the parties and the Mediator.

**(b) Prohibited Compensation.** A Mediator may not give or receive any commission, rebate, contingent fee, or similar remuneration for referring any person to mediation or for serving as a Mediator.

## **RULE 2.6 MEDIATION PROCEDURE**

**(a) Advisement of Participants.** The Mediator shall:

- (1) advise the parties of all persons whose presence at the mediation might facilitate settlement; and
- (2) disclose to the parties or their attorneys any factual documentation revealed during the mediation if, at the end of the mediation process, the disclosure is agreed upon by all parties.

**(b) Mediation Sessions .**

- (1) The parties, their attorneys, and other persons with settlement authority shall be present at all mediation sessions unless otherwise agreed. At the discretion of the Mediator, non-parties to the dispute may also be present.
- (2) Mediation sessions are not open to public.

**(c) Confidential Statement of Case.**

The attorney for each side shall submit to the Mediator a confidential statement of the case, not to exceed ten (10) pages, prior to a mediation session, which shall include:

- (1) the legal and factual contentions of the party as to both liability and damages;
- (2) the factors considered in arriving at the current settlement posture; and
- (3) the status of the settlement negotiations to date.

A confidential statement of the case may be supplemented by damage brochures, videos, and other exhibits or evidence. The supplemental materials shall be made available to opposing counsel at least five (5) days prior to the mediation session. The confidential statement of the case and its contents shall not be disclosed to opposing parties and shall at all times be held privileged and confidential to the extent provided by law, unless an agreement to the contrary is provided to the Mediator. In the mediation process, the Mediator may meet jointly or separately with the parties and may express an evaluation of the case to one or more of the parties or their representatives. If the mediation process does not result in settlement, any submitted confidential statement of the case shall be returned to the submitting attorney or party.

**(d) Termination of Mediation.**

The Mediator shall terminate mediation whenever the Mediator believes that continuation of the process would harm or prejudice one or more of the parties, whenever the ability or willingness of any party to participate meaningfully in mediation is so lacking that a reasonable agreement is unlikely, or whenever the Mediator determines that continuing the mediation process would be futile. The Mediator shall not state the reason for termination to the Court except when the termination is due to conflict of interest or bias on the part of the Mediator, in which case another Mediator may be assigned by the Court.

Either party may withdraw from and terminate mediation if it is determined that continuing the mediation process would be futile.

**(e) Report of Mediation: Status .**

(1) Within ten (10) days after the mediation, the Mediator shall submit to the Court under seal (unless the parties agree otherwise), without comment or recommendation, a report of mediation status. The report shall indicate whether an agreement was reached in whole or in part, or whether the mediation was continued by the parties.

(2) If an agreement is reached, in whole or in part, it shall be reduced to writing and signed by the parties and their counsel. Except with the consent of all parties, the agreement shall not be filed with the Court. If the agreement is complete on all issues, a joint stipulation of disposition shall be filed with the Court.

(3) In the event of any breach or failure to perform under the agreement, upon motion and after hearing, the Court may impose sanctions, including entry of judgment consistent with the agreement.

**RULE 2.7 RULES OF EVIDENCE**

With the exception of privileged communications, the rules of evidence do not apply in mediation, but factual information having a bearing on the question of damages should be supported by documentary evidence whenever possible.

**RULE 2.8 DISCOVERY**

Whenever possible, parties are encouraged to limit discovery to the development of information necessary to facilitate the mediation process. Upon stipulation by the parties or as ordered by the Court, discovery may be deferred during mediation pursuant to FED. R. CIV. P. 26(c).

**RULE 2.9 SANCTIONS**

Upon motion by either party, the Court may impose sanctions against any person who fails to comply with these Rules.

## **RULE 2.10 MEDIATOR PRIVILEGE**

Except as otherwise provided by law, Mediators shall not be subject to process requiring the disclosure of any matter discussed during the mediation, but rather, such matter shall be considered confidential and privileged in nature. The confidentiality requirement may not be waived by the parties, and a party or the Mediator may object to any attempt to obtain testimony or physical evidence from mediation.

## **RULE 3. CONDUCT AND DISCIPLINE FOR PERSONS CONDUCTING MEDIATION**

### **RULE 3.0 PURPOSE**

This Rule establishes standards of conduct for persons conducting mediation pursuant to these Rules.

### **RULE 3.1 ACCOUNTABILITY AND DISCIPLINE**

A person who accepts appointment as a Mediator under these Rules consents to the jurisdiction of the Court in the enforcement of these standards.

### **RULE 3.2 COMPETENCE**

A Mediator shall decline appointment, request technical assistance, or withdraw from a dispute beyond the Mediator's competence.

### **RULE 3.3 DISCLOSURE AND OTHER COMMUNICATIONS**

(a) A Mediator has a continuing duty to communicate as follows:

(1) notify participants through their counsel of the date, time, and location of the process, at least ten (10) days in advance, unless a shorter time period is agreed upon by the parties;

(2) describe the mediation process, including the possibility that the Mediator may conduct private sessions;

(3) disclose the cost structure of the process;

(4) advise that the Mediator does not represent any of the parties or the Court;

(5) disclose any past, present or known future professional, business, or personal relationship with any party, insurer, or attorney involved in the process, and any other circumstances bearing on the perception of the Mediator's impartiality;

(6) explain the extent to which information obtained through the process from and about any participant is or is not privileged and may be subject to disclosure; and

(7) advise that any agreement signed by the parties constitutes evidence that may be introduced in litigation concerning enforcement of settlement.

**(b)** A Mediator may not misrepresent any material fact or circumstance nor promise a specific result or imply partiality.

**(c)** A Mediator shall preserve the confidentiality of all proceedings, except where otherwise provided by agreement of the parties or by law or order of the Court.

### **RULE 3.4 DUTIES**

**(a)** A Mediator shall observe all applicable statutes, administrative policies, rules of professional conduct, and rules of Court.

**(b)** A Mediator shall act in a timely and expeditious fashion.

**(c)** A Mediator shall be impartial and civil, and shall utilize an effective system to identify potential conflicts of interest at the time of appointment. After disclosure pursuant to S.D.Ind. Local A.D.R. Rule 3.3(A), to the extent provided under 28 U.S.C. § 455(e) a Mediator may serve with the consent of the parties, unless a conflict of interest arises or the Mediator believes the Mediator can no longer be impartial, in which case the Mediator shall withdraw.

**(d)** A Mediator shall avoid the appearance of impropriety.

**(e)** A Mediator shall display and promote mutual respect among the participants throughout the process.



### **RULE 3.5 FAIR, REASONABLE AND VOLUNTARY AGREEMENTS**

- (a) A Mediator shall not coerce any party.
- (b) A Mediator shall withdraw whenever a proposed resolution is unconscionable or unjust.
- (c) A Mediator shall not make any substantive decision for any party.

### **RULE 3.6 SUBSEQUENT PROCEEDINGS**

(a) An individual may not serve as a Mediator in any dispute on which another Mediator already has been serving without first ascertaining that the current Mediator has been notified of the desired change.

(b) A person who has served as a Mediator in a proceeding may act as a Mediator in subsequent disputes between the parties, and the parties may provide for a review of the agreement with the Mediator on a periodic basis. However, the Mediator shall decline to act in any capacity except as a Mediator unless the subsequent association is clearly distinct from the issues involved in the alternative dispute resolution process. The Mediator may not subsequently act as an investigator for any court-ordered report or make any recommendations to the Court regarding the litigation.